

Intestacy – Changes

What happens when you die without a will?

The current law of intestacy was established in 1925 and sets out which of your relatives will receive how much of your estate and what will happen if there are none. The last time the rates for the statutory legacies were set was in 1993. The basic rule is that the spouse or civil partner will receive the first £125,000 of the estate if there are children and the first £200,000 if there are none. After that, there are complex rules about what happens to any amounts in excess of the statutory legacies (which include the house). The 1993 rates for the statutory legacy were just about reasonable at the time they were set but inflation has

made them progressively more unrealistic.

In August 2005, the Government carried out a consultation exercise on whether there should be any changes. Three years on it disclosed the results of the consultation and announced the action it intends to take, in a press release issued on 27 August 2008, just after the bank holiday. There are two big changes. From 1 February 2009, the statutory legacies will increase to £250,000 and £450,000 respectively.

Furthermore, the Law Commission is going to review the present intestacy rules, including aspects of

the Inheritance (Provision for Family and Dependents) Act 1975, under which dependants of a person who dies without making appropriate provision for them in his or her will can apply to the court for provision to be made. However, the review is unlikely to be completed before 2011.

Making a will is straightforward and is recommended for everyone – even those with relatively small estates – so that loved ones are provided for according to your wishes. We can guide you through the process to give you the peace of mind which comes from knowing that all your affairs are in order and your family's interests are protected.

Who Decides the Location of the Funeral?

The general rule regarding a person's funeral is that the executor of the estate has the right to make any necessary arrangements. Where there is no will, the person granted the letters of administration of the estate has the right.

That seems straightforward and it usually is, but not always. A recent case dealt with the funeral arrangements of a man who died intestate. His divorced parents were jointly entitled to administer his estate. The father wished



his son to be buried in the town in which he had lived for several years and in which his brother, most of his friends and also his fiancée lived. The man's mother wanted him to be buried near where she lived. It took a court hearing to determine that he should be buried in his home town.

In this case, the failure to make a will didn't cause problems over the division of the man's estate, but over the administration of it. Had he made a will, whoever was appointed executor under it could have decided on and made the appropriate funeral arrangements, no doubt saving much distress as well as time and money. There are reasons other than the disposal of property for making a will.

Covenant Rights Need Not Continue

A bungalow owner who wished to replace a flat roof with a pitched roof found himself in court recently when his neighbour sought to rely on a fifty-year-old covenant 'not to make any addition or enlargement or alteration' to the bungalow without the consent of the vendor. The covenant stipulated that such consent would not be unreasonably withheld. The sale documents also contained a covenant prohibiting the building of anything other than a single bungalow on the property.

In this case, however, the vendor concerned was the original owner of the bungalow and the adjacent property. The adjacent property had been sold to a new owner years previously and the covenant was not stated to extend to successors in title.

The question before the court, therefore, was whether the new owner of the adjacent property could

enforce the covenant. He argued that the commercial reality of the covenant was such that the benefit of it must be intended to pass to successors in title. The bungalow owner argued that the covenant had been restricted to the original vendor (who had died in 1977) and thus was not enforceable by the new owner.



Looking at the documents of sale, the court found that these were tightly drafted and there were other references to successors in title where appropriate. The court was not inclined to rewrite the contract. The original vendor had created the

covenant to protect her own position only. On her death, the covenant ceased to have any effect – otherwise, any future alterations to the bungalow would be rendered impossible because permission could not be given. The court described such a possibility as 'astounding'.

A covenant relating to land is normally written to include successors in title. However, in this case, the covenant was written in terms which clearly distinguished between the vendor and the successors in title to the vendor's land. Accordingly, the distinction between the rights of the vendor and the vendor's successors in title was clear.

This case shows that when they are properly drafted, covenants may be able to be used more flexibly than you might think. We can advise you on all property and planning problems.

Expat Pensioners Not Entitled to Inflationary Increases

Excluding expatriate pensioners from index-linked pension increases that are available to UK residents does not amount to discrimination, according to a recent ruling of the European Court of Human Rights.

The case arose following a 2005 judgment by the House of Lords. Writer Annette Carson, who had been living in South Africa for 15 years, claimed pension rights equal to those of UK-resident pensioners. Ms Carson turned 60 in 2000 and was then entitled to the same basic pension she would have received had she been living in the UK. As she is resident in South Africa, however, she has not received subsequent index-linked increases.

UK pensioners ordinarily resident abroad are not entitled to the annual increase, unless the country in which

they live has a reciprocal arrangement with the UK, which South Africa does not. All EU countries do have reciprocal agreements, but nearly 200 other countries do not.



The House of Lords did not support the claim and so Ms Carson and 12 other UK nationals applied to the European Court of Human Rights, claiming that the UK authorities had discriminated against them, contrary to Article 14 of the European Convention on Human Rights, which prohibits discriminatory treatment on a number of grounds.

The Court agreed with the UK Government and courts that the same high level of protection against discriminatory treatment on the grounds of race or sex was not needed in this case. Furthermore, the UK had taken steps to inform its residents moving abroad about the absence of index-linking of pensions of those resident in some countries.

The European Court therefore held that there had been no violation of Article 14.

The legal, economic and other implications of moving to another country can be very far reaching. Anyone thinking of taking such a step should consider their position carefully and take professional advice before proceeding.

Animals and Divorce

Financial settlements on divorce normally involve making financial provision for any children but, in a recent case, the ex-wife of a wealthy man successfully argued that her love of horses was sufficiently important to her that substantial maintenance should be payable for their upkeep.

The unnamed couple from Gloucestershire were childless and divorced after 11 years of marriage. The court heard that the wife had lost a baby in 2001 and regarded her three horses as substitute children. Her husband had bought her a foal as a tenth wedding anniversary present in 2004, when she already had two horses that she had purchased with her own money.

When the marriage broke up, the wife claimed that she required financial assistance for the upkeep of her horses and for eventing. She argued that her husband's past actions showed his awareness and understanding of the depth of her passion for horses.

The husband claimed that keeping three horses was an unnecessary extravagance and that his wife's needs could be met by having a house worth £600,000 and one horse that was put out to livery.

In the Court of Appeal, Britain's most senior family judge, Sir Mark Potter, stated that "during the marriage

the horses played a major part in the wife's life with the consent and encouragement of the husband." The Court upheld the award made by District Judge, Michael Segal, of maintenance of £80,000 a year, including £50,000 for the upkeep of the horses, plus £900,000 for a house with grazing land suitable for the animals.

Emotional ties to animals can be very strong. It remains to be seen how influential this decision will be on other cases involving animals.



The division of matrimonial assets on divorce demands skilful negotiation. Our matrimonial team is experienced in helping people get through the trauma of divorce and in achieving a fair financial settlement.

Forced Marriage – The Current Position

The Forced Marriage (Civil Protection) Act came into force on 25 November 2008, with specialist courts being created to deal with the cases arising.

The key concept is that a forced marriage is one in which one of the parties is forced into the marriage without their full and free consent.

The Act gives the courts the right to prevent a forced marriage occurring and to stop attempts by a person to coerce another person into a marriage.

Where the marriage has already taken place, the court is able to

make an order to protect the victim if necessary. The Act does not allow the court to annul the marriage, nor does it make forced marriage a criminal offence.

The court can make a Forced Marriage Protection Order (FMPO) and has several powers, such as requiring the surrender of a person's passport or that they reveal the location of missing persons. A power of arrest is available when an actual threat of physical violence has been made. Failure to comply with a FMPO constitutes contempt of court, an offence which can lead to imprisonment. A FMPO can be applied for by anyone who believes they are at risk of being forced to

marry or, with the leave of the court, by an interested third party. In addition a 'Relevant Third Party' (RTP) can apply. A RTP is a person appointed by the Lord Chancellor who acts in a way similar to the Official Solicitor and who is empowered to make an application on behalf of the victim. As yet, exactly how the role of the RTP will work in practice is unclear.

The Government has announced its intention to abolish forced marriage and if the new legislation fails to prove effective, there is little doubt that the law will be amended.

Contact us for advice on all family law matters.

Speeding Drivers to Face Double Penalty Points



New guidelines on penalties for speeding have been set out in a Road Safety consultation paper. The proposed changes will mean that motorists caught driving at a speed significantly over the limit could face a penalty of six points on their licence, rather than the current three points. This would mean that after two speeding offences a driver's licence could be revoked, without a court hearing. As the law stands, only the courts can impose a penalty of more than three points for a speeding offence.

The Government is hoping that by tightening up the law it will provide a deterrent for drivers. Those caught driving between 90mph

and 100mph in a 70mph zone, at 60mph in a 40mph zone and at 50mph in a 30mph zone could all face the increased penalty. In these circumstances, drivers will be given a six point penalty and a fine of £100. Currently, the penalty is three points and a £60 fine.

In a discussion paper put forward in 2004, the Department for Transport had suggested that drivers caught narrowly exceeding the speed limit would only receive a two point penalty and a £40 fine. However, it appears that the Government does not intend to make this change. Rob Gifford of the Parliamentary Advisory Council for Transport Safety recently stated that "lowering the penalty for any speeding offence would encourage drivers to take more chances." This attitude is unsurprising, given that in 2007 there were 727 deaths in which speeding was deemed to be a contributory factor. Research shows that a pedestrian who is hit by a car travelling at 35mph is

twice as likely to be killed as one hit at 30mph. Jim Fitzpatrick, Parliamentary Under Secretary of State for Transport, is of the view that "it would be counter-productive and against everything we are saying to tell someone 'you were doing 35mph so you should only get two points'. The big message we are putting out is that it's 30 for a reason."

Under the current Association of Chief Police Officer guidelines, drivers are entitled to a ten per cent leeway over the limit, plus 1mph (i.e. 34mph in a 30mph limit). Mr Gifford has called for the police to be given more power to enforce even minor breaches of speed limits.

More than 1.1 million drivers already have six or more points on their licence. The Institute of Advanced Motorists is concerned that the proposed changes could result in drivers losing their licence in the course of one journey.

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