

The Legacy Drawer Part 4 – What Happens if You Die Without a Will?

Following on from our Updates on the Legacy Drawer, Life Insurance and How to Retire Rich, here is part four of four pieces on personal financial planning.

Thinking about death is not a pleasant pastime; reflecting on our own mortality even less so. Yet it's something we must all do, to avoid unnecessary complications for our loved ones when we die.

If something happens to you and you haven't got around to writing a will, who will receive your assets? The short answer is that classic lawyers' retort: it depends.

If you die without a will (*intestate* in legal parlance) whether your wife, brother or children inherit your wealth depends entirely on where you are living and where your assets are held: it can be incredibly tricky to unravel.

It is a common misconception that if you die intestate, then your closest relatives will decide how assets are split. This is not necessarily the case. There are often rigid rules as to who inherits when you die without a will, and in some cases this will simply mean the government collects the lot.

Similarly, unmarried couples, who have cohabited for years, may assume there is no need for a will as they are common law husband and wife. This may not be the case and a partner could be disinherited by children, siblings, or even an uncle and aunt unless you have made adequate provision for them in a will.

Also, it is best not to assume a legal spouse will automatically collect everything. In some countries, such as Thailand, this is not the case. Below are some examples of how intestate rules differ: they are generalisations and the rules may apply differently and your assets may come under different jurisdictions.

Thailand

Thai law states that if there is no will covering assets in Thailand, the estate is split up proportionally into seven classes of people. If you are married, your spouse would be seventh priority in the pay-out; meaning that he/she would receive a proportion of the inheritance. He/she would only receive 100% of your assets if there are no surviving people in your family under the first six classes, which range from children to aunts and uncles.

England and Wales

If your assets come under English and Welsh law (it works differently in Scotland), the husband, wife or civil partner would keep all the assets (including property) up to GBP250,000, as well as all the personal possessions,

whatever their value. The remainder of the estate is divided in half between your husband, wife or civil partner; and your children.

If you have no spouse and you have no surviving direct family members, your estate could go to the Crown.

Australia

If you die intestate under Australian law your partner inherits everything if you have no children. The definition of partner is looser than in some other countries, however. A partner can be a legal spouse; someone who you lived with for at least two years prior to your death; or someone with whom you have had a child and has lived with you prior to your death.

If you do have children then your partner would receive your personal possessions and up to AUD100,000, as well as a third of the remaining inheritance. Your children would receive two-thirds of that remaining sum.

United States

In the US the destination of an inheritance without a will is decided by the individual state. In states with a *community property* regime (e.g. Arizona, California and Texas - mainly states whose law derives from Mexico) your community property (property obtained during marriage) will be shared between your spouse or domestic partner and your children. Separate property will generally be distributed according to these rules, with variations depending on state law:

Seek advice

Writing a will can ensure there is adequate financial provision for your family, and specify who should care for them in your absence.

Do-it-yourself wills are becoming ever-more popular; and a wealth of information can also be downloaded from the internet. For those with relatively straightforward affairs this can look like a cheap option. However it is easy to make fundamental mistakes, which can be highly problematic: the will could be challenged or disregarded altogether. A badly-made will could also land your relatives with huge legal fees – dwarfing the fees charged to draw up a will correctly.

Expatriates who own physical property in Thailand might also consider having a separate Thai will to plan for the complexities and limitations of having a foreign will enforced in Thailand

Additionally, factors such as owning property in a different country, having step children and being potentially liable to pay inheritance tax mean that you should almost certainly seek independent legal advice: your will should be accurate, unambiguous and comprehensive.

To know more about wills, speak with your MBMG advisor. Contact us on +66 2665 2536 or info@mbmg-international.com.