

## The importance of making a Will

A recent article in [The Guardian](#) highlighted the issues that may arise when a person dies without a will (intestate).

*‘Everything I own will pass automatically to my spouse or children’* is a common misconception. The only certain way to ensure that your spouse, partner, children or relatives inherit what you intend is by making a Will.

Without a Will, your estate will be distributed on your death under rules laid down in the Administration of Estates Act 1925, commonly known as the ‘Intestacy Rules’. The Intestacy Rules do not necessarily pass the Deceased’s estate the way you would expect or intend. Depending on the size of the estate, the spouse does not automatically receive the entire estate. A spouse may find themselves with a life interest in part of the estate, which can overcomplicate an administration at an already difficult time. Although the spouse may have a claim under the Inheritance (Provision for Family and Dependents) Act 1975, it would obviously be preferable to avoid disputed proceedings if at all possible.

In addition those rules do not make any provision to pass your estate to a person living with you (“cohabitee”). Despite a common belief, there is no such concept as a “common law spouse” (although the position of a cohabiting partner on death is currently under review with the Inheritance and Trustees’ Powers Bill which is due to undergo its second reading in the House of Lords next month).

Most worryingly for parents, if you do not have a Will it may be left to the court to appoint guardians of any children under 18. If you have a Will you can stipulate who the guardians should be and make the appropriate financial provision for your children.

In your Will, you can choose the Executors who will administer your estate. Their authority to act derives from the Will and whilst they will require the Grant of Probate to deal with your estate, they are able to deal with certain aspects of the administration before the Grant is issued. In the case of intestacy, as pointed out in the Guardian article, there are often practical difficulties which have to be dealt with. Until a grant of probate has been issued, an administrator has no authority to deal with the necessary parties.

Further, by appointing Executors, it is clear who is responsible for the administration of the estate so any initial delay will be minimised.

A properly drawn Will can make the administration of your estate much simpler at a time of considerable distress to those closest to you.

If you would like any further information on our Will drafting services, please contact Rebecca Fisher in our [Private Client Department](#):

**Rebecca Fisher**

Partner

+44 (0)20 8394 6218

Rebecca.Fisher@russell-cooke.co.uk

If you require advice on any dispute pertaining to a will or an administration, please contact Alison Regan in our [Trust and Estate Disputes](#) team:

**Alison Regan**

Partner

+44 (0)20 8394 6549

Alison.Regan@russell-cooke.co.uk

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