

Law Commission publishes final report on Intestacy and Family Provision Claims on Death

On 14 December 2011 the Law Commission published its final report on Intestacy and Family Provision Claims on Death making a number of recommendations to Parliament for the reform of the law in this area.

As the law currently stands, if a person dies without leaving a will (which as many as two thirds of the population do) that person's estate will be distributed according to the laws of intestacy, which date back to 1925.

The Law Commission has made a number of recommendations for change which include the following:

- A surviving spouse where there are no children or other descendants would inherit the whole estate (whereas at present the surviving spouse only receives the first £450,000 outright);
- Simplification of arrangements where a person dies leaving a surviving spouse and children or other descendants. As the law stands at the moment, the surviving spouse receives the deceased's personal effects and the first £250,000 of the estate outright. Half of what is left in the estate is held on trust for the surviving spouse who can use the asset and receive any income from produced by it (a life interest). The remaining half of the estate passes to the children / other descendants outright. The Law Commission has proposed that the life interest be removed so that the surviving spouse receives half of the balance of the estate outright, after receipt of the first £250,000.
- A change in the rules relating to domicile for claimants under the Inheritance (Provision for Family and Dependants) Act 1975 ("the Inheritance Act"). At present, certain categories of people who are not provided for by a deceased person's estate are able to bring a claim for provision under the Inheritance Act, but only if the deceased dies domiciled in England and Wales. This can lead to unfairness where a deceased dies domiciled outside of England and Wales leaving assets governed by English succession law. The proposed change would enable a claim under the Inheritance Act where there were such assets.
- Cohabitants who meet certain criteria may also share in their partner's estate in circumstances where he or she dies without a will. The Commission has suggested that in order to take such a share, there must have been cohabitation for a period of five years (two years if there is a child of the couple). Currently, cohabitants have no right to receive anything from the intestate estate of a deceased partner. In order to obtain anything, the surviving cohabitant must bring a claim under the Inheritance Act.

These recommendations, if adopted by Parliament, are to be welcomed.

In particular, the changes would ensure certain unmarried couples in settled relationships (many of whom are not aware that the current law does not provide for them to receive anything from the estate of their partner) would receive provision as of right where there is no will.

A further positive development would be the change in rules on bringing claims where a person dies domiciled outside of England and Wales as this would recognise the international element of many estates.

It remains of course possible for people to make a will to avoid property passing according to the laws of intestacy, and this remains the most effective way of ensuring that property passes according to the wishes of a person when they have died.

Richard Frimston, Head of Private Client, was a member of the expert advisory group to the Law Commission during its project.

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