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PRIVATE CLIENT DEPARTMENT

WILLS FACT SHEET

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1. Introduction

The object of this document is to help you understand the position your estate may be in if you die without a Will

Whilst the rules have been updated recently in favour of spouses/civil partners, there is a common conception that one's husband/wife/partner will always receive their estate on death and this is not necessarily the case.

These notes apply to those domiciled in England and Wales

2. If you are married or have a civil partner

If you have children:

Your spouse/civil partner will receive:

- All your personal belongings (chattels)
- The first £250,000 of your estate (or the entire estate if less) in value – this can take the form of property or money
- Half of the remainder of your estate

Your children will receive:

- The other half of the remainder of your estate is to be split between them (if they are minors then this is placed on trust for them until they reach the age of 18)

If you do not have children:

Your spouse/civil partner will receive:

- Your entire estate

3. If you are not married or do not have a civil partner

If you have children:

Your children will receive:

- Your entire estate

If you do not have children:

Your estate will be distributed to one of the following groups in order of priority

- Parents
- Siblings
- Half-siblings

- Grandparents
- Uncles/aunts (or their children)
- Half-uncles/half-aunts (or their children)
- The Crown, The Duchy of Lancaster and the Duchy of Cornwall

There is no recognition of unmarried partners under English and Welsh law for the purposes of inheritance and you will need to ensure you have a Will to benefit your partner under these circumstances.

4. Guardianship of your children

If you have minor children (under the age of 18) and have made no provision for the appointment of guardians then if your children are orphaned they will have guardians appointed by the Court. These are not necessarily who you would choose. By nominating guardians in your Wills, you can avoid this situation.

5. Children receiving capital

In the absence of a Will and even if your children receive your estate in accordance with the Intestacy provisions, they will receive everything at the age of 18. Many parents would wish to place a little more control over their children's inheritance to ensure they receive considerable sums of money at a time when they are more likely to understand the value of it.

You can include trusts within your Will to provide for your children whilst they are minors or under an age of your choosing and then allow them capital when you hope they will be better able to use it wisely.

Typically you may choose:

- To leave a contingent gift – For instance if your children reach the age of 18/25 they will receive the gift (which can be a share of the residue of your estate)
- To leave an absolute gift – Your children will become absolutely entitled to a gift under your Will but would not receive it until the age of 18 (or older age as specified)
- To leave a discretionary trust – You can leave a sum of money on trust for your children at the discretion of your trustees.

6. Second families

Increasingly, people have children within different families throughout their lifetimes. The Intestacy provisions do not necessarily account for this as you might wish.

We find that, in second marriages and relationships, partners are more inclined to wish to protect their assets for their own children and the inclusion of trusts within their Wills is an effective way to ensure that assets are passed to the correct side of the family.

It is often appropriate to include a life-interest trust of the matrimonial home to the surviving partner for their lifetime which serves to keep the interests of the two families separate and may also assist if either is subject to an assessment for care fees.

7. Care fees

With an ageing population and longer life-expectancy, the cost of care is increasing. The current threshold for care fees (under which you pay all of your care fees) is £23,250 in England and £23,750 in Wales. If you hold property jointly, the survivor can end up being assessed for care fees against the entire value of their property.

Particularly where there are second families, it may be sensible for partners to arrange for trusts of their respective shares in the property to be placed on trust for the life of each other. The funds within trust are therefore typically outside of their estate for tax and care fees assessment. This will not apply to all but can be a useful tool for ensuring inheritance between families is in line with your wishes, protecting inheritance and controlling the tax liabilities.

8. Inheritance Tax

The tax position should not generally be your first consideration when thinking about your estate but, with the increase in property values, it is becoming an issue for more people. By taking some advice and applying suitable provisions within your Wills, it is possible that you may be able to save considerable amounts of Inheritance Tax whilst still achieving your inheritance wishes.

We will discuss your current assets with you and provide advice on how you might reduce the Inheritance Tax liability on your estate. We do not simply prepare Wills, we discuss your family situations and assets in order to advise on relevant matters now in addition to drafting testamentary documents.