

LEAVING PROPERTY TO YOUR CHILDREN

The way in which your children can inherit your property depends on whether you have written a Will, the type of ownership of the property, the age of your children and whether you have set up a trust. You should note that it is not possible for a child under the age of 18 to own land or buildings legally. Therefore, if you have bought an investment property, or you intend to leave your own home to your children, you should provide specific arrangements in your Will. (Please note, the information provided below relates to England, unless otherwise stated.)

Understanding the laws of intestacy

If you do not write a Will, your property will be distributed according to the laws of intestacy. These rules are complex and depend on your personal situation. However, where your children are concerned the following rules are important to note (these rules apply to deaths after 1st February, 2009).

If you leave a spouse and children, your spouse receives:

- 'Personal chattels' (these are defined in law and are taken to mean personal items such as cars, jewellery and other household goods. It does not include houses, bank accounts, investments or businesses, which instead are added to the deceased's estate to be distributed as described below).
- The first £250,000 of the deceased's estate. If the estate is less than £250,000, the deceased's surviving spouse or civil partner will receive the whole of the estate.
- A 'life interest' in half of what is left. 'Life interest' means the income or interest of any money that is invested, but not the money itself. The capital (the original amount) passes to your children when the surviving husband or wife dies. Your children share between them half of what is left, if they are over 18 years old, and the other half of what is left when their surviving parent dies. Illegitimate and adopted children are included in this, but stepchildren get nothing, unless they are named in a Will. Therefore, if you have remarried and your spouse is not your child's parent, you must make a Will so that your child can inherit their share of your estate.

If you leave children and no spouse, your children share everything equally. If your children are under 18, their share is looked after by your personal representatives acting as trustees until your children reach the age of 18. (A personal representative is a person who administers a deceased person's estate. If there is a Will and the personal representative is named in it they are known as an executor. If there is no Will, or they have been appointed by the court, they are known as an administrator.)

For more information about these issues you can access a useful HMRC Inheritance Tax Customer Guide available from <http://www.hmrc.gov.uk/cto/customerguide/page14-1.htm>.

Knowing about property ownership

The type of ownership of your property also has an influence on your child's inheritance. There are two types of ownership, as described below.

- A joint tenancy: this is a way for two or more people to own a property. Cohabiting couples often have this type of agreement, but it is also possible for a parent and child (or children) to decide on this type of ownership, which can be held by up to four people. When one owner dies the other owners of the property receive the deceased owner's share automatically. This means that there is no need for a Will to be drawn up to pass on the property and that joint owners cannot leave their share to other people in their Will. An advantage to this type of ownership is that property is transferred to the surviving joint owners without the delay and cost of probate. A disadvantage is that if an owner wishes to leave their share in the property to someone else, other than the other joint owners, they must first sever their joint tenancy.
- A tenancy in common: in this type of agreement each joint owner owns a separate share in the property. On the death of one of the joint owners, their share passes to whoever has been named in their Will or, if a Will has not been drawn up, is transferred through the laws of intestacy (see above). Unlike a joint tenancy, the share of the deceased owner does not pass automatically to the other owners, so it is very important to draw up a Will to make sure that your share of the property goes to the person (or people) you want it to. If you are divorced or separated and there are children from other marriages who you do not wish to inherit your share of the property, it is imperative that you write a Will in which you make this clear.

If you need to know more about these issues, or you wish to change the type of ownership on your property, you should seek the advice of a solicitor. You can find a solicitor in your area by consulting the relevant website listed below:

The Law Society of England and Wales: www.lawsociety.org.uk

The Law Society of Northern Ireland: www.lawsoc-ni.org

The Law Society of Scotland: www.lawscot.org.uk

More information about the laws of intestacy and writing a Will can be obtained from the Justice website: www.justice.gov.uk.

Setting up a trust

Children cannot own land or property if they are under the age of 18 so, if you die before they have reached this age, their inheritance will be held in trust and decisions about what to do with the property will be made by the administrators or executors who have been appointed to deal with your estate.

Therefore, you may find it preferable to set up a trust of your choosing while you are alive, so that you can decide how the trust will be managed, controlled and administered. For example, you could set up a trust through which you ask that a second property is let to tenants with the proceeds from the rental income being invested in equities. The profits from this investment could then be distributed to your children when they reach a significant age, with the property transferred into their names when they reach the age of 18.

If you choose this option you need to set up a trust and appoint trustees who are competent and happy to let the accommodation and who are able to invest the rental income in a way that will maximize returns. The trustees are responsible for making sure that all appropriate taxes are paid.

For more information about setting up a trust, see *Setting up a Trust*, available from www.seniorcash.co.uk. Comprehensive information and advice about all these issues is provided in *Investing in Property for your Children*, by Catherine Dawson (Lawpack: £14.99).

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