

Having no Will could affect your family

“If you don’t write a Will your partner may be left with nothing” That’s the stark message from Iain Cameron of The Co-operative Legal Services. In cases where someone has died and no Will has been written strict laws of Intestacy have to be applied. In such cases if you are not married then you will normally have little right to any of the estate, unlike those who are married who will automatically inherit at least some of the estate in cases of Intestacy. A recent case that Iain was working on highlights exactly this kind of problem.

A highly successful business professional was tragically killed and left behind his common law wife and 2 children. Although they had been together for many years and had changed the Partners name by Deed Poll he had never got round to writing a Will. As Cameron explains “The couple had made the common mistake of assuming the law would protect the interests of the mother if anything happened to the father. In fact, under the laws of intestacy, because they were not married she was not entitled to a penny from the estate and everything in his sole name, including all of his investments and the family home, automatically passed to his sons on statutory trusts” (created by action of the law). Theoretically when the youngest one reaches 18 they can cash in the investments, sell the house and furniture which could place their mother in an awkward situation.

Fortunately the deceased had nominated his partner to receive the significant amount of Death in Service lump sum from his occupational pension scheme so she will not be completely empty handed. Cameron goes on to say that “this may work against her in other ways because the size of this payout and the fact she is young and fit enough to work, means that any claim she might otherwise have made against her sons under the Inheritance (Provision for Family and Dependents) Act 1975 is unlikely to succeed.” If the couple had been married there would have been no tax to pay until after the second death and even then the first £624,000 of the estate would have been free of tax.

It’s not just the partner who lost out either. As the couple were not married there was no exemption from Inheritance Tax and the sons have had to pay HM Revenue & Customs over £50,000 as they only benefitted from one Nil Rate Band.

Iain Cameron says “If the couple had spent £184 including VAT on mirror wills (perhaps a bit more if they wanted to include a trust of property) all of this heartache and potential conflict between mother and children could have been avoided.