

What happens when, like Aretha Franklin, you die without a will

In the UK 30 million adults have failed to make provision for their estate and it is not just money that could be affected

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Aretha Franklin died without a will, leaving a fortune estimated at \$80 million
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The news that Aretha Franklin, the “Queen of Soul”, died intestate, leaving a fortune estimated at \$80 million (£62.4 million), should serve as a wake-up call to anyone else without a will.

Peter de Vena Franks, the campaign director for Will Aid, a charity that encourages people to make a will, says: “We are hearing more about people in the public eye passing away without a will. Aretha Franklin joins Jimi Hendrix, Bob Marley, Amy Winehouse and Prince on a list of celebrities who have died intestate. It is a common misconception that if you die without a will, your closest relatives will decide how assets are split. This is not the case. There are rigid rules and in some cases the government can collect the lot.”

About 30 million adults in the UK do not have a will and, more worryingly, this includes 54 per cent of people with children, and 64 per cent of unmarried couples, according to Will Aid.

Yet failing to make provision for your loved ones when you die can lead to confusion and heartache. Your wealth could go to people you did not intend it to go to, depriving those you cared for most. We answer your questions on what happens if you die intestate.

We are married with no children. Will my spouse inherit everything when I die?

Yes. Your surviving spouse will inherit the entire estate. Emily Wiggins, a partner at Hart Brown, a Surrey law firm, says: “While this is beneficial for the spouse, it eliminates any claims for other relatives, including parents.” The same rules apply to civil partnerships.

What happens if we have children?

The surviving spouse would inherit the first £250,000 of the estate, all personal items and half of whatever remains. The other half is inherited by the children and is divided equally between them, although they cannot gain access to the estate until they are 18. This applies to all children of the parent who has died, even if they come from different relationships. A quirk of this is that the share of any estate that does go to children may be subject to inheritance tax.

We are an unmarried couple living together, with children. What happens when one of us dies?

The key thing is that the surviving partner does not inherit anything, because the term “common-law partner” has no legal standing. This is why it is so important for couples in this position to make wills. Under the intestacy rules, the deceased person’s estate would be shared equally between the children.

What if we don’t have children?

The estate will pass to the deceased person’s parents, if one or both are alive. Failing that, it would be divided equally between any surviving brothers and sisters, or, failing that, to any half-brothers or half-sisters. Next in line come any grandparents, followed by aunts and uncles, then half-aunts and half-uncles. If there are no surviving relatives in these categories, the estate passes to the Crown.

If there are no surviving blood relatives, what happens then?

The estate passes to the Crown under a process known as bona vacantia. The Crown can grant shares in the estate to those who can prove that they have an entitlement, although it is under no obligation to do so.

When a parent dies intestate, does care of any dependent children pass automatically to the surviving spouse?

It doesn't, and more than half of those with dependent children do not realise this. This is another example of how the importance of making a will goes well beyond simply disposing of an individual's wealth.

What happens if both partners die at the same time?

The same rule applies: custody of the children will not go automatically to the relatives or individuals whom they intended it to go to if they have not made their wishes clear in a will.

Will Aid month is in November. People can write a will without charge with participating solicitors in return for a donation (willaid.org.uk)