

GUIDE

Accidental Disinheritance



About
My Will

Who are we?

We are professional Will Writers who have established ourselves in the market since 2003.

We differ from most firms of Solicitors or Will Writers in that not only are we experts in Will Writing, many of our consultants are fully qualified Independent Financial Advisers who are regulated by the FCA.

This allows our Will Writers to consider many different aspects of your personal circumstances and offer individual solutions if required.

AboutMy Will's primary aim is to maintain customer satisfaction; this has always been our company ethos and always will be.

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About this guide

In this guide we are going to explain what is accidental disinheritance, and also look at circumstances where it can easily happen, with potentially devastating consequences on your children, who by now would have lost both parents.



This guide is applicable in England and Wales only.

0800 234 6847

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Accidental Disinheritance

Many people think that there is no need to make a Will as everything they own goes automatically to their spouse or children.

Without a valid Will in place when a person dies, they are said to have died "intestate".

This means that it is not a Will that determines who gets your Estate (everything you own when you die) but it is the Intestacy law that determines who receives your Estate, and also how much they receive.

Married with Children

If you are married with children and die intestate then your spouse will receive the first £250,000 of your Estate and your children and your spouse will share anything above £250,000. Given the cost of houses, it is not that difficult for a persons estate to be more than £250,000, especially if you live in the south east of England.

If you are lucky your children will agree with your surviving spouse on how your surviving spouse can continue to live after you have passed away, but if you are unlucky, by not having a Will in place when you die can lead to serious disagreements between the surviving spouse and your children.

Married with Children

If you are married without children but with parents or brothers or sisters or nephews or nieces, then your spouse will receive the first £450,000 and your immediate family will share anything above that.

It may well be that your spouse is comfortable only receiving the first £450,000, but the chances are that they would have preferred to be given a choice rather have your Estate being shared amongst your family under English Law,

especially if you know that they would have wanted everything to go to you.

So, it may be that not having a Will is not as straightforward as people may assume, especially if you don't have children.

Re-marriage with children

There is always a chance that a surviving spouse may decide sometime in the future to get re-married, especially if they are quite young when their spouse passed away.

Even if a person had a valid Will when they got married, the very act of marriage invalidates any pre-existing Wills, which most probably made provision for their children.

The children of the person who has passed away now become step children and that status is very different to that of natural children when it comes to Intestacy laws.

Under intestacy laws step-children are not recognised at all, and if the surviving spouse doesn't have a Will and dies before their new spouse then the first £250,000 of their Estate goes to their new spouse and not to their children.

In this situation the children didn't inherit when their first parent died and then didn't inherit when their second parent died. The person who has benefited the most is often the new spouse who may (but probably not) decide to be fair and make provision for their step children.

It is this situation which is known as accidental disinheritance. Both parents would have wanted their children to inherit from them but because neither parent had a valid Will when they passed away and through bad timing when their surviving parent died before their step-parent, the children receive nothing.

So, by not having a Will you are leaving the distribution of your Estate to luck, which can easily result in your Estate going to a person you didn't even know, that is, your surviving spouse's new partner.

The solution to accidental disinheritance

The only way to be certain that your children are not accidentally disinherited from your Estate is to include them in your Will.

This can cause a problem because if you gift outright your share of the family home to your children it is possible for a conflict to happen and your surviving spouse is forced to sell the family home and downsize.

Other problems can occur if the children become bankrupt as their share of the family home is taken into account when assessing their assets, and again could force a sale of the family home.

A better solution is to create a Will in which you gift your share of the family home into a special Trust called a "Protective Property Trust" that gives the surviving spouse a legal right to live in the home, and only when they no longer need to live in the home can the house be sold and passed to the children in accordance with the Will.

Under this method you can be certain that not only your children will not be accidentally disinherited, but assured that your surviving spouse has a legal right to live in the house until they no longer need it.

How can I find out more?

The quickest way to get started is to speak to one of our Will Writers so we can carry out a No Obligation Will Review.

We will show you exactly what is included in your will and if you don't have a Will we will explain in detail the best Will for your financial circumstances.

If you have any questions that you would like to ask about the process, the guide or Will Writing in general please call us on:

Step 1

Talk to one of our Will Writers.

We'll discuss your requirements and how we can help.

Step 2

Drafting & Payment.

Once we have received your payment we will draft your will for your confirmation, we will review your will until you are happy.

Step 3

Distribution & Sign.

We'll post you instructions on how to sign your Will. Or if you opted for a home visit you can sign it with a Will Writer present.

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