

What every feminist needs to know about property law

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Why make a will?

- Young, fit and healthy? You may die tomorrow in an accident
- If you don't make a will, your property will pass under the intestacy rules – which may not be what you want
- If you don't make a will, the persons appointed to administer your estate will have much more trouble, work and expense sorting things out

Intestacy rules 1

- If you leave a surviving spouse or civil partner (CP) but *no issue, parent, sibling or issue of a sibling*, s/he gets everything.
- If you leave a surviving spouse or CP and no issue, but a blood relative as above, your spouse/CP will inherit one-half of the residuary estate and the other half will go to your parent/s; if no parent, to your sibling/s; if any are dead, their children will share their share.

Intestacy rules 2

- All members of a class (siblings, children) share in equal shares. Children of deceased children share their parent's share.
- If you leave a surviving spouse or CP *and* issue, s/he gets your *chattels* and a statutory legacy (the amount of which differs according to whether there are also parents or siblings), *plus* half the residuary estate and the other half for life, then that half will pass to the issue.

Intestacy rules 3

- If you leave no surviving spouse or CP but leave issue, they will inherit the net estate.
- If you leave no surviving spouse or CP but parent/s, they will inherit the net estate.
- If you leave no surviving spouse, CP, issue or parent, the net estate goes to your siblings; if none, to your half-siblings; if none, to your grandparents; if none, to your aunts and uncles.
- If you leave none of the above, your estate goes to the Crown.

Intestacy rules 4

- Spouse or CP means *legally married or legally registered CP*.
- Minor children will have their share held in trust for them till they reach 18.
- ‘Children’ does not include stepchildren.
- Adopted children inherit from their adoptive parents not their natural parents.

How to make a will

- In writing (hand, typed, or word-processed)
- On any material – blank sheet of paper is best
- Signed by you
- Two witnesses
- As your last will
- Your executors may be beneficiaries, but
- Your witnesses must not be beneficiaries

Will conventions

- I REVOKE all previous wills
- I APPOINT executors and trustees
- I GIVE legacies of money
- I BEQUEATH gifts of specific articles
- I BEQUEATH leasehold property
- I DEVISE freehold property
- I EXPRESS a wish about my funeral and disposal of my body
- IN WITNESS and SIGNED

Other points for wills

- Instead of using these technical terms, you could write 'I give' or 'I leave'.
- You should provide for alternate beneficiaries for all gifts, in case one predeceases you.
- A failed gift will fall into the residue (see later slide).

If you and your partner die together

- To cover situations where you and your partner are in the same accident and you die first, but s/he lingers and then dies, and you want to ensure that your property passes under *your* will, not to him or her and then under his or her will, you may wish to add a clause to the effect that 'If [your partner] does not survive me by one month, I wish the [gift] to go to' an alternate.
- If two people die in the same accident, and it is not possible to say who died first, the older is presumed to have died first.

Executors

- It is useful to have two executors.
- Ask them first!
- Name an alternate in case any is unable to act when you die (e.g. because they have predeceased you).
- Give full names and addresses – anything that would help identify them (mobile phone number?).
- Friends are best, as professionals are slow and costly.
- Leave them a sum of money to recompense their time and trouble (expenses come out of the estate).

Residue

- The residue is what is left when all gifts and expenses are paid. Failed gifts will fall into the residue. It is sensible to leave this to your main beneficiary or to a charity.
- Alternatively you could divide your entire estate into fractions and leave equal amounts to each group – e.g. a quarter to each of four named charities.

Provision for pets and children

- Leave your pets to a trusted friend, with provision for their upkeep
- Some charities have schemes to take pets by will e.g. the RSPCA and the Blue Cross; they will appreciate a donation with the animal
- Appoint a guardian for your minor children
- Remember that minor children cannot be legal owners of land, but can be beneficial owners under a trust
- If you need to set up a trust, consult a lawyer!

Challenging a will or intestacy 1

- Under the Inheritance (Provision for Family and Dependants) Act 1975, certain people can claim a share in an estate even if not included in the will.
- They include spouse or civil partner or former spouse or civil partner, children (including adopted children), anyone treated as a child of the marriage/civil partnership, and anyone who considers that s/he was maintained by you to a material extent immediately before your death.

Challenging a will or intestacy 2

- Your partner (different- or same-sex) who has been cohabiting with you for two years immediately prior to your death as if you were married or in a civil partnership can claim without having to prove s/he was maintained by you.
- The court will decide what is a reasonable share based on factors such as size of estate, conduct of all the parties, needs and resources of the parties and length of the relationship.

Domicile

- Your will is governed by the law of the country in which you are domiciled (not your country of citizenship).
- The law of Scotland is different from the law of England and Wales. These slides refer to England and Wales.

Buying property together

- Co-owned land in England and Wales is always held under a trust. This means there will be legal owners and beneficial owners.
- If you buy with someone else, it will usually be expected that you are both/all named as legal owners on the contract, deed, and Land Register.
- You will be asked how you wish to hold the *beneficial title*: as JOINT TENANTS or TENANTS IN COMMON.

Joint tenants

- Own the whole of the land together
- If one dies, their 'share' passes automatically to the other/s *irrespective of any will*.
- If the property is sold, the proceeds of sale will be divided equally between/among them.
- Joint tenancies are often favoured by couples, but are not always suitable for subsequent marriages where the intention is to leave property to children of an earlier marriage.

Tenants in common

- Own shares in the land. These should be stated in the conveyance e.g. ‘in equal shares’ or ‘in the proportion 30% to A, 70% to Y’.
- If one dies, their share passes under their will.
- If the property is sold, the proceeds are divided according to the named proportions.
- Tenancies in common are more suitable for non-couple relationships e.g. commercial arrangements or friends, or where children of earlier relationships are to benefit.

Does marriage/CP make a difference?

- Property Law makes no distinctions between married and unmarried people. But Inheritance Law does, and Family Law does.
- On **death**, if there is a joint tenancy, the deceased's share of the property will pass to the other joint tenant/s outside the will. If there is a tenancy in common, the deceased's share will pass under the will or intestacy rules.

On divorce/dissolution

- However, if co-owners are married or in a CP, and they **divorce or dissolve their CP**, the Land Law rules no longer apply. The Family Court has an unlimited discretion to re-allocate all the parties' property between them according to criteria which include contributions to the family and the resources and future needs of the parties and their children.

Unmarried cohabitation 1

- If you buy property together, make sure it is conveyed to you jointly and specify whether you want a beneficial JT or a T In C. Your decision will be *binding* (except in the event of a divorce/dissolution of a CP).
- You can change the way the property is held e.g. by severing a joint tenancy or adjusting the shares according to changed circumstances.

Unmarried cohabitation 2

- If you move in with someone who is the legal owner of the property, and the relationship breaks down, you may have no right to a share in the property.
- Though your children may have separate rights against their other parent, you will have no access to other property (e.g. pensions) as you would on divorce/dissolution.
- You could go to court to claim a share if there has been an agreement, or if you have contributed to the property itself (e.g. to the mortgage payments).

Other issues

- Ante-nuptial and cohabitation agreements
- 'Next-of-kin'
- Inheritance tax
- Joint bank accounts
- Rental tenancies
- The myth of the 'common-law marriage'

The myth of marriage

- If a relationship ends, a person in a weaker financial position than his/her partner is probably better off married/in a CP. On divorce or dissolution, s/he is more likely to get an allocation proportional to his/her needs.
- If a relationship ends, people in a strong financial position are probably better off unmarried. They can arrange their financial matters as they wish and when they separate no court will interfere.

Forewarned is fore-armed

- DO NOT ASSUME S/HE WILL ALWAYS LOOK AFTER YOU, s/he will always be there, s/he would never do a thing like that. When relationships break down, people behave in extraordinary ways, encouraged by their knowledge of their legal rights (and lawyers are quick to advise them).
- ORGANISE YOUR PROPERTY ARRANGEMENTS NOW. Co-own your property according to your wishes. Sort out your pensions – most schemes recognise cohabiting partners now. Write wills.