

# LEGAL GUIDANCE FOR SOLICITORS & THEIR CLIENTS IN ESTATE ADMINISTRATION MATTERS

Finders Genealogists Limited have produced this definitive guide in order to assist solicitors and their clients with problem areas of Estate Administration

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Supporting



National Missing Persons Helpline

◀ **finders** ▶

international probate genealogists

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## 1

## INTESTATE SUCCESSION LAW

The relatives of the Deceased who may benefit on intestacy in England and Wales are in the following order:

1. **Surviving Spouse**
2. **Issue** (i.e. children or descendants)
3. **Parent(s)**
4. **Brother(s) or Sister(s) of the whole blood or their descendants**
5. **Brother(s) or Sister(s) of the half blood or their descendants**
6. **Grandparent(s)**
7. **Paternal and maternal Uncle(s) or Aunt(s) of the whole blood or their descendants**
8. **Paternal and maternal Uncle(s) or Aunt(s) of the half blood or their descendants**
- \*9. **The Crown, Duchy of Lancaster or Duchy of Cornwall**

PLEASE NOTE: A surviving member of any of the above classes excludes all members of classes lower in the table.

\*SCOTLAND ONLY Any descendant(s) of Great Grandparent(s) or Great-Great Grandparent(s) can take in priority to the Crown.

## 2

## DID THE DECEASED MAKE A WILL? CHECKLIST WHEN LOOKING FOR A MISSING WILL AND HOW TO AVOID UNNECESSARY COSTS

If you are dealing with an Intestacy but need to check for a Will, or you hold a Will and are unsure if a more recent Will was made, it is advisable to take the following steps :

1. Check the Deceased's personal belongings.
2. Ask any known friends, relatives or neighbours of the Deceased.
9. Contact members of the Institute of Professional Willwriters local to the Deceased's last known address.

**At this point** you have the option of continuing with the following checks yourself or asking a Probate Genealogist to complete this work for you :

3. Check with the Deceased's Bank and/or Building Society.
4. Write to all Solicitors local to the Deceased.
5. Check the depository of the Principal Registry of the Family Division.
6. Organise a standing search at the Principal Registry to monitor any applications for a Grant to the Estate.
7. Advertise in newspapers local to the Deceased's address at death and up to two previous addresses as appropriate and if necessary (according to circumstances of each case).
8. Advertise in the Law Society Gazette (Wills & Whereabouts section - currently they have a minimum charge of £157.50 + VAT for such ads, correct as at May 2004).

**COSTS** If we are involved in research to find missing heirs or missing kin on a Contingency basis we fund all of the above steps ourselves and the service is completely **free of charge**. If working on a Budget or Fixed Fee basis, or we have been instructed to search for a Will only (no other research required) we will invoice you for the cost of any advertisements plus a service charge of £200 + VAT. There is no advance payment and we send our invoice with our final report.

**Our competitors' 'WILLSEARCH' service currently costs a minimum of £300 plus VAT, plus Advertisement costs and Disbursements, therefore you can expect to pay £500 - £600 for their service.**

**Please Note :** We must allow a reasonable period for responses to advertisements, usually 14-28 days. We aim to complete all checks within this period. Once these searches are done there is an increased likelihood of indemnity insurance being agreed to by an insurance company. Finders can arrange suitable indemnity insurance for you, if required.

## 3

## YOUR OPTIONS WHEN A PERSON HAS DIED WITHOUT ANY KNOWN NEXT OF KIN

**Acting in the best interests of the (as yet unknown) beneficiaries and the Estate is vital. Delays, complaints, criticism and conflict can be avoided and your commercial interests maintained.**

**This is a subject where much misleading and potentially damaging information has recently been circulated to solicitors. However, when a person dies without any known next of kin the consensus of opinion is that you can take some positive action which should safeguard any time and expense you may have spent on the matter and could lead to you administering the Estate in the usual way, without leaving you open to possible action from kin if you take a course of action they later consider not to have been in their best interests.**

In practice, next of kin can be found in priority to the Crown in the vast majority of cases and without risk. This can be done without time being spent or costs being incurred by the Solicitors or Estate Custodians.

To further elaborate; the following is an extract from the Law Society Probate Section Journal May 2004 :

**' Despite the fact that there is no overall regulatory body, this is an almost complaint free industry',**

**according to Daniel Curran, owner and director of Finders, who has 14 years experience and is registered as a Law Society-Checked Expert Witness.....**

**.....'assets such as property primarily but also financial investments need immediate attention after the Deceased's death', But the course of action (applying for an order under Section 116 of the Supreme Court Act) suggested could take in the order**

of six to nine months, says Curran. And he points out that one of the main complaints received by the Law Society from the public is the amount of time taken by lawyers to wind up an estate. 'While a solicitor is applying for an order, the property could be falling into disrepair and by the time the next of kin is located they may, quite justifiably, ask why no action was taken to trace them sooner and why the solicitor felt they had a right to cause delay and deplete the assets of their deceased relative.' Curran suggests an alternative course of action :

- Avoid spending your time and incurring costs unnecessarily.
- Take free advice - Contact a Genealogist at an early stage

and take advantage of the Contingency fee arrangement if offered. Agree the commission rate in advance if required.

- Try not to incur Estate expenses until next of kin are located and there are formal instructions.
- Wait for the Genealogist to provide details of entitled kin.
- Offer services to the located kin in the usual way, explaining your involvement to date.
- Apply for the Grant and continue to administer the Estate. It may now only be 7 days since you called the Genealogist and you can only be praised for your prompt and efficient action.

## 4 WHAT TO DO WHEN BENEFICIARIES ARE MISSING OR UNKNOWN IN OTHER SITUATIONS

**Having checked the Deceased's belongings and questioned any known heirs, you may find yourself with a problem. You could advertise, but this could be expensive and time consuming. It may also lead to bogus claimants coming forward, whose claims will need to be checked. Our regular clients will usually contact us first as we often help out with such problem situations free of charge, especially where there are minimal sums at stake or we can find someone quickly and simply through our in-house resources.**

Otherwise, you could obtain a quotation from a Genealogist. We guarantee our Estimates to be free of charge or obligation. Please be aware that some firms may mark their file with time spent on "free" Estimates and deduct it from an agreed fee once instructed; they may also hold back a percentage of the fee as a 'profit margin'. Finders do none of these and assure you that 100% of the fee is spent on research.

We also offer Contingency fees which can be ideal in a number of situations. The sums due to any existing known heirs are completely unaffected by our work and, therefore, they will not be subsidising research to find missing or unknown people. We agree a fee directly with any heirs we may find, expressed as a percentage of the net entitlement due to that person.

The percentage varies, usually from 10% to 30%, according to the amount of work involved, difficulty and complications and the sums due. The percentage rate can be agreed with solicitors in advance of research commencing and if the heirs cannot be found or have died out a full report is sent, but there is no charge at all. This is seen by the majority as the fairest and most ethical way of funding research and it is the fee option preferred by most solicitors and their clients. The statement we regularly hear is: "We knew the Deceased and already know we are entitled, so why should we pay for finding other people who know nothing about this and may never have heard of the Deceased".

## 5 GENEALOGISTS CREDENTIALS EXPLAINED

**In general terms we would advise that, in the first instance, a client or beneficiary checks the promotional material and website of any Probate Genealogist and looks for clarification of any claims as to quality of service, membership of societies or other endorsements and explores data protection and company registration to ensure that these are valid and legitimate. Although we would welcome a Regulatory Body, there is none for the Genealogy profession.**

- Some Endorsements may simply be paid for with no proof of expertise or quality of service. Sometimes the Endorsement is only available to one firm per profession and is sold on a first-come first-served basis. Such an 'Endorsement' cannot then be obtained by any other firm once it has been sold.
- All logos on the Finders website are linked to the websites from where the logos originate, thus enabling clients and beneficiaries to easily check our details. Our memberships, qualifications, data protection registration and company registration are all visible on our website.
- We have our own Professional Conduct Code (see website).

## 6 MISSING BENEFICIARY INDEMNITY INSURANCE (MBI)

**Remember that MBI insurance is not a substitute for proper research and the insurance company will always require proof of efforts made to trace missing beneficiaries. Think first before advertising, because often insurers will not accept a risk for a year or more after an advertisement has been placed, deeming it to be a current unresolved 'enquiry'. After having researched a case we can usually approve policies ourselves instantly through our unique on-line system.**

We can also secure 'comfort' policies when requested. This is where all heirs have seemingly been found, but the reassurance of a policy would cover the unlikely eventuality of additional or prior kin emerging at a later date.

Premiums are one-off payments and start from around £200, (or approximately 1% of the sum insured) and vary according to the situation and level of indemnity required.



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