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SIDEWAYS DISINHERITANCE TRAP – INFORMATION FOR CLIENTS Walsh West Private Client Legal 2021

What is the “sideways disinheritance trap”, and how do you avoid it?

Sideways disinheritance is a term that relates to children losing out on their share of their parent’s estate as a result of remarriage. This is becoming a greater problem as people live longer and longer and are therefore more likely to remarry after the death of a spouse.

To demonstrate what sideways disinheritance is, we are going to talk through a typical scenario using a married couple (we shall call them Mr and Mrs Baker) with two children.

In this scenario, Mr Baker passes away before Mrs Baker.

With a typical mirror will, the assets of Mr Baker then pass to Mrs Baker who consequently owns all the assets.

If Mrs Baker then remarries (to Mr Butcher for the purposes of this example) and passes away before Mr Butcher, then Mr Butcher will usually receive all of the assets as marriage will revoke the will Mrs Baker held with Mr Baker.

Mr Butcher has two children and when he dies, he leaves all his assets (including those which originally were held by Mr and Mrs Baker) to his children.

In this scenario, Mr and Mrs Baker’s children receive nothing and this is a classic sideways disinheritance example.

In a scenario like this, Mr and Mrs Baker’s children are likely to want to claim for their share of the inheritance. The children of Mr Butcher may be very accommodating which means this becomes less of a problem (albeit still likely more costly). If the children of Mr Butcher are less accommodating then Mr and Mrs Baker’s children may want to go to court to make an inheritance claim. Not only is this costly for all involved, it is also likely to be highly distressing for all involved at what is likely to be an extremely stressful time.

So, having established sideways disinheritance as a potential problem, how can we overcome it? As with most of these things, sensible planning can make an enormous difference so by creating Wills which have a trust that is activated when the first of a couple passes, some of your assets would be protected in the above scenario and go to your children when the survivor passes away, regardless of remarriage.



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A Life Interest in Property Trust within your Will is one great preventative measure for this situation as this means your share of the family home will go into a trust as opposed to being given directly to your Spouse or Partner. We recently published two case study examples on estate planning with a Life Interest in Property Trust which you can see by clicking [here](#) and [here](#).

As this demonstrates, planning is extremely important when it comes to your Will. Sideways disinheritance can be a real problem and it's often something people don't think about, or don't want to think about when drafting their Wills as many cannot imagine the possibility of wanting to remarry after the death of a Partner. We strongly believe that prevention is better than cure in this scenario so would advise you to carefully consider all scenarios when your Will is being drafted to avoid serious problems like sideways disinheritance.

If you would like any information about sideways disinheritance or perhaps you are in a second marriage and not sure how and if this will impact you, then get in touch with us and we can arrange to discuss options with you and advise you of the next steps.

For initial advice about Estate Planning including Lasting Powers of Attorney, Wills, Trusts and Probate; call our team on 0203 488 7503, 01992 236 110 or contact us by email at welcome@walshwestcca.com or via our website www.walshwestcca.com and we will help you.