



## BUTLERS

*Barristers & Solicitors  
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*The Personal Law Firm*

### INTESTACY

#### WHAT HAPPENS IF YOU DIE WITHOUT A WILL

##### Intestacy

If a person dies without a valid Will, he or she dies “intestate.” This occurs if no Will has been made or if an invalid Will has been made. For example, the following are some of the situations where intestacy may occur:-

- If the Will was not properly signed; or
- If the person making the Will is of unsound mind, or mentally ill/incapable at the time of making his/her Will; or
- If the Will is damaged to the extent that it cannot be read or interpreted.

A partial intestacy may also occur where a person dies with a Will, but only part of the Will is valid.

##### Distribution of Estate on Intestacy

If a person dies intestate, the intestacy legislation determines the distribution of that person’s Estate. All Australian states have their own intestacy legislation. In Western Australia, the main statute is the Administration Act 1903 (as amended) which applies to both the real estate and personal estate of the deceased.

In Western Australia the Estate of a person who dies intestate may be distributed between the following:

- a) The deceased’s spouse which includes separated and de facto spouses;
- b) The deceased’s children, including ex-nuptial children; and
- c) In some cases other relatives of the deceased eg. parents, siblings, grandchildren, uncles, aunts, nieces, nephews and grandparents.

##### Persons Not Able to Benefit on Intestacy

Persons not entitled to benefit under the intestacy rules include:

- a) Relatives by marriage other than a spouse;
- b) Step children;
- c) Any person economically dependant upon the deceased other than those entitled to benefit as referenced above; and
- d) Relationships arising from the Artificial Conception Act 1985 (WA).

##### Where No One Entitled to Benefit

If there is no person entitled to an intestate’s property, his/her Estate then passes to the Crown (Government).

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## De-Facto Spouses Entitled to Benefit

As of 1 December 2002, the intestacy legislation in Western Australia changed to include de facto spouses and same sex spouses as potential beneficiaries of an intestate's Estate.

For instance, if you've been married and separated, but never obtained a divorce, and:

- a) Have been living in a de facto relationship for over 2 years and less than 5 years, and then die without a Will, then your de facto wife and your legal wife will each receive one half of the amount to which your legal wife would otherwise have been entitled.
- b) Have been living in a de facto relationship for more than five years and die without a Will, then your de facto wife will receive what your wife would otherwise have received.

In contrast, divorced spouses are not entitled to claim under the intestacy rules, but are eligible to file a claim under the Inheritance (Family and Dependents Provision) Act 1972 (WA), but only if they are in receipt of or are entitled to maintenance at the date of the intestate's death.

## Administration

If a person dies without a Will (unless the deceased's Estate is less than \$10,000.00), the spouse, de facto partner or next of kin should apply to the Supreme Court for Letters of Administration. A personal representative (Administrator) will be appointed by the Court to hold the Estate of the intestate on trust for the benefit of the persons entitled to the Estate and to finalise the deceased's affairs. If a person dies with a partially valid Will, the Executor of the Will holds the affected property on trust.

The scheme of intestate distributions is governed by the value of the deceased's Estate. For instance, if the net value of the Estate (except household items) is more than \$50,000.00, and the intestate dies leaving a spouse and children, then the surviving spouse is entitled to the Estate equal to the sum of \$50,000.00 plus one-third of the rest of the Estate. The children are entitled to the remaining two thirds of the Estate. Bear in mind that with the new legislation regarding the rights of a de facto spouse, the division of the Estate can be drastically altered.

If you do not want your real and personal property to be distributed according to the legislative scheme regarding intestacy, or if you have a valid Will which no longer addresses your present situation, we strongly recommend that you have an up to date Will prepared.

## Butlers

At Butlers we pride ourselves on being "The Personal Law Firm". Our commitment at Butlers is to make the law more accessible, affordable, understandable and human. We aim to reduce your concerns by speaking and writing in plain English, cutting through legal jargon and keeping you informed at all times. Through it all, we work closely with your family's accountant, bank manager, financial adviser, and other professionals as required.