

Intestacy

What Happens if you die without a Will

The Australasian Lawyers Group Pty Ltd trading as Butlers, Barristers & Solicitors

Intestacy

If a person dies without a valid Will, he or she dies "intestate." For example, the following are some of the situations where intestacy may occur:-

- After making a valid Will (that has not been made in contemplation of marriage or divorce) a person divorces or marries.
- The person never made a valid Will; 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 the Will only disposes of part of the person's estate.

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 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.



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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; and
- c) Any person economically dependant upon the deceased other than those entitled to benefit as referenced above.

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).

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.

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 Dependants 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 for the Beneficiaries on intestacy.

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 household contents, 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. With the new legislation regarding the rights of a de facto spouse, the division of the Estate can be drastically altered.

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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.

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