What happens if I die without a Will?

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Having a valid Will enables you to decide who receives your estate (the combination of all your assets after you die). If you die without a Will (or without a valid Will), the law decides who gets your assets. This is referred to as the laws of intestacy. Leaving the administration and distribution of your estate to the laws of intestacy will often cause more stress for loved ones, take longer to finalise and cost more. In this blog, we explore what happens if you die without a valid Will in Victoria.

What are the laws of intestacy?

Every State and Territory in Australia has its own formula, contained in an Act of Parliament, which determine how and to whom a person's estate is distributed if they die without a valid Will.

This means that if you die without a Will, your assets and possessions may not be distributed as you may have hoped, but instead according to a legal formula prescribed by the State or Territory government, generally where you lived.

Who will inherit my estate if I die without a Will?

In Victoria, the legislation that determines the distribution of an intestate estate (an estate that is not devised to someone in a valid Will) is the *Administration and Probate Act* 1958 (Vic) ('the Act').

Pursuant to the Act, the following distribution of the estate occurs when a person dies without a valid Will and, at the time of death, they had a partner and/or children.

When a person dies intestate leaving a partner but no surviving children

The partner will receive the whole of the estate.

When a person dies intestate with no partner but has children

The estate will be divided equally between any surviving children.

When a person dies intestate leaving grandchildren of a deceased child

If a child of the intestate (that is, a person who dies without a valid Will), predeceases their parent and has children of their own (grandchildren of the intestate), then those grandchildren will receive the share (equally divided) that the child of the intestate would have received, had they survived.

When a person dies intestate with a partner and children from a former relationship

If an intestate (that is, a person who dies without a valid Will) leaves a partner **and** a child or children from a previous relationship (ie, not children of the current partner), the partner and each of any surviving children will receive a portion of the estate. Notably, however, in this scenario, the partner will receive the majority.

What happens if the deceased has no partner and no children?

Under the Act, if the intestate left no partner and no children, the estate will be distributed to relatives in the following order:

- Parents;
- Siblings;
- Grandparents;
- Uncles and aunts; then
- Cousins.

If no living relatives are found, the estate will pass to the Crown. These rules apply to anyone who died in Victoria after November 2017.

What if the deceased has more than one partner?

In accordance with s70Z of the Act, if an intestate does not leave a child but leaves more than one partner, the partners are generally entitled to the whole of the estate in equal shares. This will apply to partners who are not married but are in a domestic partnership with the deceased.

What is a domestic partnership for the purposes of a deceased estate?

A domestic partnership, more commonly referred to as a de facto relationship, is when two people are not married but live together or have lived together as a couple on a genuine domestic basis.

You need to have lived in a domestic or de facto relationship for two years, or have a child together or have formally registered your relationship before your partner can benefit from your estate if you die without a Will.

You can read more about de facto relationships and the factors which are considered when determining whether persons are or were in a de facto relationship, in our blog, "De facto rights and entitlements in family law".

Who administers the deceased estate if there is no valid Will?

If a person dies leaving a valid Will, they will have named an executor, and that person will administer the estate. If a person dies without a valid Will, a grant of Letters of Administration will need to be applied for to enable distribution of the estate.

Generally, in order to distribute assets to beneficiaries of an estate where the deceased died without a valid Will, a person(s) needs to be appointed by the court as the estate administrator.

The person(s) appointed administrator of the estate will be bound to deal with the estate in accordance with the law.

Who can apply for Letters of Administration?

In all cases where it is necessary to apply for a grant of Letters of Administration, it is usually the person with the greatest interest or entitlement in the estate that applies for the grant.

In many cases, the grant will be made to the deceased's 'next of kin' - which is the deceased's closest relative, as they will often receive the greatest entitlement in the estate. This will normally be the deceased person's spouse, de facto partner or children.

How can I apply for Letters of Administration?

To become an estate administrator, you will need to apply for a grant of Letters of Administration from the Supreme Court of Victoria. You can read more about grants of representation, including grants of Letters of Administration, in our blog, "Grants of Representation when dealing with a deceased estate".

Applications need to include detailed information about the estate, the deceased and the proposed administrator. This can be a stressful and at times, complex process.

How a Wills and Estates lawyer can help

In the absence of a valid Will when someone dies, we can assist you in applying for a Grant of Letters of Administration. This can help alleviate the stress involved with the process of losing a loved one.

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