



What happens NOW when you don't leave a Will?

If someone dies without leaving an effective Will they are said to have died intestate. The new Succession Amendment (Intestacy) Act 2009 applies to persons dying intestate on or after 1st March, 2010.

The new law has brought in extensive changes to the entitlements of a surviving spouse (or domestic partner) and the deceased's children.

A "spouse" is defined as a person who was married to the deceased immediately before the death or a party to a domestic partnership with the deceased immediately before death.

A "domestic partnership" is defined as a defacto relationship which has been in existence for a continuous period of at least 2 years or has resulted in the birth of a child. Once the Relationships Register Act commences it will also include a registered relationship such as a same sex relationship.

Spouse and children's entitlements

- As a result of the latest changes to the law where the deceased did not leave a valid Will and is survived by:-
 - *One spouse, (no children) – The spouse receives the entire estate.*
 - *One domestic partner, (no spouse, no children) – The partner receives the entire estate.*
 - *More than one spouse or domestic partners, (no children) – The spouse/partners share the entire estate.*
 - *One spouse, (with children of the deceased and the spouse) – The spouse receives the entire estate.*
 - *More than one spouse or domestic partner, (with children of the spouses/partners) – The spouses/partners are entitled to share the entire estate.*
 - *More than one spouse/partner, (with children/not being children of a surviving spouse/partner) - The spouses/partners share:-*
 - (a) personal effects
 - (b) the statutory legacy (\$350,000 CPI adjusted)
 - (c) one half the remainder of the estate.
- If the children survive 30 days after the deceased they will share the remaining half share.
- *No spouse or domestic partner, (with children) – The estate is divided equally between the children.*



The effect of the law is that children do not inherit on intestacy unless they are children of a non-surviving spouse.

Distribution Agreement and Distribution Order

The sharing by spouses referred to above takes place in the following ways:-

1. By agreement between the spouses evidenced by a Distribution Agreement.
2. By Order of the Court (a Distribution Order – where the Court may order that property be distributed between the spouses in anyway it considers just and equitable including allocating the whole of the property to one of the spouses to the exclusion of the others).
3. By the Administrator provided that notice is given to the spouses that he intends to distribute equally after 3 months if there is no Distribution Agreement or Distribution Order made in that time.

Spouse's preferential right to acquire property

The spouse has a preferential right to acquire property from the estate at its market value at the date of the deceased's death, subject to certain conditions. The spouse must exercise this right of election within 3 months of the date of a notice from the personal representative of the deceased or 3 months after a grant of administration. In some circumstances the approval of the Court may be required to the spouse's right to acquire property.

Distribution amongst other relatives

After the categories of spouse and children, the further categories of relatives of the deceased entitled to the estate comprise in order the following;

1. parents;
2. brothers and sisters (if they have either or both parents in common);
3. grandparents;
4. aunts and uncles;
5. the first cousins (where an aunt or an uncle of the deceased has predeceased leaving a child or children);
6. the State of New South Wales.

The State has discretion to make provision in favour of dependants or persons who in the opinion of the Minister have a just or moral claim on the deceased's estate.

At Bateman Battersby we have a number of experienced Lawyers who specialise in Wills and Estates related matters. If you need help or advice about your entitlements and rights under the new legislation or if you wish to discuss any of the matters addressed above or any estate issue, please feel free to contact Scott Johnson or John Bateman on (02) 4731 5899 or email us at willsstates@batemanbattersby.com.au.