

What happens if you die without a Will?

Information for people without a Will...

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- 1. What happens when you die without a Will?**
 - 1.1. In this article, we look at what happens if you pass away without a Will or, perhaps more commonly, what you should be aware of if someone you know passes away without a Will.
 - 1.2. If someone dies without a Will (or their Will is declared invalid) then standard intestacy laws apply to that person's estate. An estate basically means all of the person's assets, liabilities and obligations that they had when they were living.
 - 1.3. This fact sheet will summarise some of the most commonly applicable intestacy rules.
- 2. Who handles the estate when someone passes away without a Will?**
 - 2.1. When someone passes away without a Will, their estate needs an administrator. This is someone to handle the process of dealing with assets, paying out debts, and distributing any proceeds of the estate to the appropriate beneficiaries.
 - 2.2. An administrator of an intestate estate is very similar to an executor of an estate. The difference is that an executor is appointed under a Will. An administrator is appointed by the court after that person makes an application to the court to be the administrator. The appointment of an administrator by the court is called "letters of administration".
- 3. How do you apply for letters of administration?**
 - 3.1. Only certain people can apply to the Supreme Court for Letters of Administration. Sometimes, certain people may have priority over others to make the application.
 - 3.2. The court will usually only consider an application (for letters of administration) from the following people in the following order:
 - a. Surviving spouse (including a de facto partner) if none, then:
 - b. Children if none, then:
 - c. Grandchildren or great grandchildren if none, then:
 - d. Parents if none, then:
 - e. Brothers and sisters if none, then:
 - f. Children of brothers and sisters if none, then:
 - g. Grandparents if none, then:
 - h. Uncles and aunts if none, then:
 - i. First cousins if none, then:
 - j. Anyone else the court may appoint – this may include the Public Trustee of Queensland.
 - 3.3. The application can sometimes be complex. It is best to seek legal advice to assist you in drafting the application or deciding on best steps.
 - 3.4. The **Queensland Courts website** outlines the steps involved in applying for letters of administration. The steps basically are:
 - a. Advertising your intention to apply;
 - b. Giving a copy of your notice to the Public Trustee;
 - c. Prepare your application documents;
 - d. File with the Supreme Court.
- 4. How is the estate split up after someone dies without a Will?**
 - 4.1. The administrator must administer the estate in accordance with the relevant laws. If they do not, they may be personally liable to account for any non-compliance. Those various obligations and the risks of non-compliance are a topic for another time.

- 4.2. The rules for distribution of an estate are to distribute in the following order:
- a. In Queensland, the spouse receives the first \$150,000, plus one third of the residue where there is more than one child. If there is only one child, though, the spouse gets half of what's left. The surviving child or children share in the remaining half or two thirds of the amount left over. If no spouse then:
 - b. Children, if none then:
 - c. Grandchildren or great grandchildren, if none then:
 - d. Parents, if none then:
 - e. Brothers and sisters, if none then:
 - f. Children of brothers and sisters, if none then:
 - g. Grandparents, if none then:
 - h. Uncles and aunts, if none then:
 - i. First cousins, if none then:
 - j. The crown or State of Queensland.

5. Meaning of a de facto partner

- 5.1. The term de facto partner is defined as 'either one of two persons who are living together as a couple on a genuine domestic basis but who are not married to each other or related by family.'
- 5.2. In deciding whether two people are living together as a couple on a genuine domestic basis, any of their circumstances including the following may be taken into account:
 - a. the nature and extent of common residence
 - b. the length of the relationship
 - c. whether or not a sexual relationship exists or existed
 - d. the degree of financial dependence or interdependence
 - e. ownership use and acquisition of property
 - f. the degree of mutual commitment to a shared life
 - g. the care and support of children
 - h. the performance of household tasks
 - i. the reputation and public aspects of the relationship.
- 5.3. To share in the estate of a partner who has died intestate the relationship must have been in existence for a continuous period of at least two years ending on the deceased's death.
- 5.4. Since 1 April 2003, the gender of a partner is no longer relevant and the term de facto partner covers same sex couples for deaths after that date.

6. What effect does adoption have?

- 6.1. Where a valid adoption has taken place; that child is, for all purposes, a child of the adopting parents as if the adoptee was born to them in lawful marriage. The adopted person ceases to be a child of their natural parents for succession purposes.
- 6.2. An adopted person has the same rights as any lawful child to the estates of their adopted parents and the relatives of their adoptive parents, as though they are natural grandchildren, brothers or sisters or nephews and nieces.
- 6.3. When an adopted person dies without a valid Will, their adopting parents and their next of kin have the same rights as if they were the adopted person's natural parents or next of kin. Additionally, the descendants of an adopted person have the same relationship rights as their parent.

7. Can someone dispute an estate split if someone dies without a Will?

- 7.1. If someone dies without a valid Will in place, it is possible to dispute the estate.
- 7.2. To do so, that person will need to show that they have some sort of standing to make a claim and some sort of need for further provision from the estate.
- 7.3. Standing to make a claim generally means that you need to prove your relationship to the deceased's estate. This can include applications by spouses, step-children, children, dependants, inter-dependants, de facto partners and other people who have some connection to the deceased.
- 7.4. Need for further provision from an estate rests on a number of variables but basically looks at:
 - a. Your position in life (including health, finances and other obligations);
 - b. The deceased's moral obligation to you;
 - c. Your reliance on the deceased;
 - d. Reasons why the deceased may not have included you in the Will.
- 7.5. We will discuss this topic in more depth in a future information sheet.

8. What can Swanwick Murray Roche do for you

- 8.1. We can assist in:
 - a. guiding you through estate administration processes;
 - b. applying for letters of administration;
 - c. assisting you to make a claim on an estate for further provision;
 - d. defend a claim on the estate;
 - e. preparing a Will.

9. Contact

- 9.1. For more information, please contact Robert Rooney at Swanwick Murray Roche lawyers:

Swanwick Murray Roche

PO Box 111 Rockhampton 4700
 74 Victoria Pde Rockhampton 4700
P: +61 7 4931 1888
F: +61 7 4931 1899
E: enquiries@smrlaw.com.au



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- 10.1. The material contained in this publication is of a general nature only and is based on the law as of the date of publication. It is not, nor is intended to be legal advice. If you wish to take any action based on the content of this publication we recommend that you seek professional advice.