

Wills, Marriage and Intestacy

The Salvation Army says more than a million baby-boomers don't have a Will and are risking their family's financial future. So a recent survey by them reveals!

Marriage revokes a Will, unless the Will is expressly stated to be in contemplation of the testator's marriage to a named person, and the testator subsequently marries that person. General words such as "in contemplation of any marriage" are insufficient. However, the Will is not revoked if the intended marriage does not take place for any reason.

If you do not leave a Will, your estate is distributed according to certain strict rules, as laid out in schedule 2 to the Succession Act 1981. Broadly, these rules provide that the estate passes to your "spouse" or blood relatives, including children.

Spouse is defined as:

- A husband or wife;
- A defacto partner provided that the parties had been living as a couple on a genuine domestic basis for a continuous period of at least 2 years ending on the deceased's death;
- A person from whom the deceased had been divorced, who had not remarried, and who at the time of the deceased's death was receiving or entitled to receive maintenance from the deceased.

Apart from payment to a spouse, the intestacy rules broadly provide facts and an intestacy estate is distributed along his blood line as follows:

- If there is a spouse but no children, the spouse takes everything;
- If there is a spouse and one child, the estate is divided as follows:
 - (a) The spouse takes:
 - (i) \$150,000;
 - (ii) Household chattels;
 - (iii) Half of the residue.
 - (b) The balance of the residue passes to the child.
- If there is more than one child, the spouse receives \$150,000, the household chattels and 1/3rd of the residuary estate with the balance passing to the children.
- If there are children but no spouse, the children take equally. Should any of the testator's children die before the testator, but leave children, those children will take their parent's share equally.
- If there is no spouse or children, but the testator is survived by a parent or parents, the parents take the entire estate in equal shares.
- If none of the above apply, the estate is distributed among the testator's family as follows, and in this order:
 - (a) Any brothers and sisters of the deceased;
 - (b) If any brothers and sisters have died before the testator leaving children, those children take their parent's share in equal shares;
 - (c) If there are no brothers and sisters or their children, the estate passes to any surviving grandparents in equal shares;
 - (d) If none of the above apply, the estate passes to any uncles and aunts related by blood to the deceased, or their children if any of those uncles and aunts die before the testator. Broadly, "uncles and aunts" are defined as the brothers and sisters of the testator's parents.
 - (e) If the deceased leaves no blood relatives, the estate passes to the Crown in the shape of the State of Queensland.

These rules explain how it is possible that obscure long-lost relatives suddenly inherit a fortune. Tracing relatives can be expensive and time consuming, and can absorb a lot of the assets of the estate.

For these reasons, even if you do not have close family, you should make a Will if for no other reason than to avoid the State getting its hands on your assets.