



Do you want to decide what happens to your assets after you die?

If a person dies without a valid will, he or she dies “intestate”. This means your next of kin or the Public Trustee must apply to the Supreme Court of Queensland for the right to administer your estate. The administrator must then distribute your estate in accordance with certain rules as set out in the *Succession Act 1981 (Qld)* (**the Act**).

Intestacy rules

Under Queensland intestacy rules, if a person dies without a will, their estate is distributed as follows:

- If you are married with no children, your spouse receives 100% of your estate.
- If you are married with one child your spouse receives the household chattels and the first \$150,000.00. Any amount over \$150,000.00 is divided equally between the spouse and your child. In the event your child is under the age of eighteen, their share will be held on trust until they reach the age of eighteen.
- If you are married with two or more children your spouse receives the household chattels and the first \$150,000.00. Any amount over \$150,000.00 is divided:
 - 1/3 for your spouse.
 - Remaining 2/3 divided equally between your surviving children.

***It is your legacy.
You should
decide how your
estate is
distributed.***

Household chattels are defined in section 34A of the Act as:

- “all furniture, curtains, drapes, carpets, linen, china, glassware, ornaments, domestic appliances and utensils, garden appliances, utensils and effects and other chattels of ordinary household use or decoration, liquors, wines, consumable stores and domestic animals owned by the intestate immediately before the intestate's death.”

They do not include:

- “a motor vehicle, boat, aircraft, racing animal, original painting or other original work of art, trophy, clothing, jewellery, or other chattel of a personal nature.”

Without a will your estate will not always be distributed as you wish.

If you want a donation to be given to The McGrath Foundation after you die or for your 1969 Ford Mustang to go to your best friend you must put your wishes in writing by way of a will.

De facto Partner or Spouse

The distribution rules also consider the situation where there is a spouse and a de facto spouse. In those circumstances the legislation provides for three ways in which the distribution may be made.

- By written agreement – a distribution agreement;
- By an order of the Supreme Court – a distribution order; or
- In equal shares if the personal representative has not been given notice of a distribution agreement or an application for a distribution order after having given three months notice to the spouse and de facto spouse of their rights in relation to the options above.

A de facto partner is defined in section 32DA of the *Acts Interpretation Act 1954* (Qld) as a reference to 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.

Same sex couples would be considered as spouses under the intestacy rules.

In accordance with the definition provided in section 5AA of the Act, a person is the spouse of a deceased person only if, on the death of the deceased, the person was the deceased's husband or wife or the person was the deceased's de facto partner (in accordance with the definition above) and the person and the deceased had lived together as a couple on a genuine domestic basis for a continuous period of at least 2 years ending on the deceased's death.

Craig Mason

Associate

The intestacy rules are aimed at achieving a fair, just and equitable outcome, however they do not take into account individual circumstances and particular wishes. Every person should see a Solicitor to make a will in order to ensure their wishes are expressly met and their estate distributed according to their family's specific circumstances.

"The information contained in this article is general in nature and cannot be regarded as anything more than general comment. Readers of this article should not act on the basis of this comment without consulting one of Rostron Carlyle's legal practitioners who will consider their particular circumstances."

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