



Registered TM 1227576

Dean R. Love & Associates

Barristers & Solicitors
DRL Legal Pty Ltd (ACN 123 034 846)

FAMILY LAW – CIVIL LAW – CRIMINAL LAW

ABN 34 123 034 846

Perth Office:
1st Floor, 231 Adelaide Terrace
PERTH WA 6000

Postal:
PO Box 3263
PERTH WA 6832

Tel: (08) 9218 9993
Fx: (08) 9218 9557
enquiries@drlegal.com.au
www.drlegal.com.au

INTESTACY

This information sheet outlines the law about what to do when a person dies either:

- Without leaving a Will; *or*
- Leaving a Will that, for some reason, does not cover all their property (estate).

In this information sheet the word estate means all the land, property and assets of a deceased person.

What is intestacy?

A person dies “intestate” when:

- They die without a Will; *or*
- They die with a Will that does not cover all of their estate.

The problems of intestacy

After the payment of the deceased’s debts, certain legal rules state how an estate is to be divided when a person dies intestate. These rules may not reflect the deceased’s wishes.

An application to the Probate Division of the Supreme Court may need to be made to get authority to administer and distribute the estate. This depends on how much the estate is worth. The deceased’s next of kin usually makes the application.

By failing to make a Will, a deceased person will have no say in how their estate is distributed. It is distributed according to law.

Without a Will it may be hard to work out who should apply for permission to administer the estate.

Search for a Will

It is important to search for the Will of the deceased. Useful places to check are:

- among the personal papers belonging of the deceased;
- the bank;
- insurance company;
- solicitor;
- accountant;
- the Public Trustee; *and*
- trust corporations such as Perpetual Trustees WA Ltd.

If you still cannot find a Will you may have to advertise in the daily newspaper.

The deceased will have died intestate if all attempts fail and a Will is not found.

Who inherits where there is no Will?

The *Administration Act* 1903 of Western Australia sets out how the estate will be shared out. The rules are complicated and vary depending on:

- the value of the estate, *and*
- the relationship of the deceased to the surviving “next of kin” (spouse, children, grandparents, parents, brothers and sisters and their children).

From 1st December 2002 where a de facto partner dies without a Will, their surviving partner may be entitled to some or all of their estate.

A de facto partner or next of kin should seek legal advice. It is important to find out if they have a right to any part of the intestate estate.

The definition of parent will now in some circumstances include the same sex partner in a de facto relationship.

If you are a child of the deceased and your parents were never married, it may not affect your right to claim part of the estate. In some cases you may be required to prove the relationship to the Probate Division. You should seek legal advice about this.

It is only when a person dies without a Will and no next of kin that their estate will be handed over to the Crown (State Government).

Letters of Administration

Where a person has died intestate, an application is made for *Letters of Administration*. The application is made at the Probate Division of the Supreme Court. Anyone over the age of 18 and entitled to a share in the estate can apply.

You cannot apply for Letters of Administration until 14 days after death.

If the application is successful the Court grants *Letters of Administration* to someone who then has the authority to deal with the Estate as Administrator.

If the gross value of the Estate is not more than \$ 10,000, see “Small Estates” below.

To apply you must complete and lodge the necessary documents and pay a prescribed fee. If the deceased lived more than 80 kilometers from Perth, contact the Clerk of Courts at your nearest Local Court.

You may need a lawyer to help make your application.

Sometimes no one is willing to administer the Estate. In these circumstances the Public Trustee or a Trust corporation may be authorised to administer the estate.

Duties of the Administrator

The main duties of the administrator are to:

1. gain control of the property of the deceased;
2. file a list of the assets of the Estate and their value;
3. pay the funeral expenses, taxes and other debts of the deceased;
4. prepare a final account showing all payments into and out of the estate and how the assets of the estate have been dealt with; *and*
5. distribute the estate of the deceased according to law.

An administrator must be at least 18 years of age. The administrator must oversee the estate as required by law. The administrator can be held personally liable for failure to do so.

Small Estates

An administrator does not always have to be appointed to wind up the deceased's estate.

- a surviving spouse or other next of kin may be able to distribute the estate without obtaining Letters of Administration. This may be possible if the value of the assets is small, *and*
- consists only of household goods and small sums of money.

Where a bank or building society is holding \$ 6,000 or less of the deceased's money they are authorised to:

- Use the money for the payment of funeral expenses of the deceased; *and*
- To pay the balance to the surviving spouse, parent or child.

Check with your bank about this.

If an estate is a small one (i.e. the gross value does not exceed \$10,000) the staff at the Probate Division can sometimes help you make your application. The only payment is the Court Fees.

The staff at the Probate Division cannot give you legal advice.

When you are working out the gross value of the estate you do not include:

- assets held in joint tenancy with the deceased; *or*
- proceeds of life insurance policies unless they are left to the estate.

If you think the estate is a small one, you can go to the Probate Division and ask them about it.

It maybe helpful to contact the Probate Division on 9421 5152 to see what documents you need to take with you.

Changing the way the estate is decided

The Supreme Court has the power to change the way the Administration Act distributes an estate. This power comes from the *Inheritance (Family and Dependants Provision) Act 1972*.

Certain persons who were dependants of the deceased person can apply to the Supreme Court. The application is made on the basis that their needs have not been properly looked after.

The application must be made within six months of the grant of the *Letters of Administration*. In some circumstances this time may be extended. Extensions of time are rare.

Legal content last updated: January 2005