



Distribution of estate under SA laws of intestacy

What happens to your estate if you die without making a Will?

Effective from 26 February 2009

The assets of a person who does not leave a Will are distributed according to the law. In South Australia, the following distributions apply to surviving members of the family according to Section 72 of the Administration and Probate Act 1919.

Spouse or domestic partner (no children)

All assets are distributed to the spouse or domestic partner.

A husband or wife is a lawful spouse. A person may be determined by Court to be a domestic partner if he or she has been living in a close personal relationship for three years (or has a child from the relationship).

Spouse or domestic partner and children

If the total estate is less than \$100,000, the whole estate passes to the surviving spouse or domestic partner.

If the total estate is more than \$100,000, the spouse or domestic partner is entitled to the following:

- personal property (including furniture, effects and car)
- \$100,000 and half the remaining balance
- where the family home is in the sole name of the deceased, the surviving spouse or domestic partner has the right to purchase the home.

Children are entitled to the balance of the estate. The share of any child under the age of majority (ie under 18 years) must be given to the Public Trustee to manage under trust.

For example, a person dies without a Will and is survived by a spouse and two children. The assets comprise of a motor vehicle, furniture and effects and \$150,000 in the bank. The distribution is:

- to the spouse - motor vehicle, furniture and effects, \$125,000 (comprising the first \$100,000 plus half the balance which is \$25,000)
- to the children - \$25,000 divided equally between them (ie \$12,500 each).

Children (no spouse or domestic partner)

Distribution is in equal shares to the children (if a child has died and has had children, then those children take their parent's share in equal proportion).

Parents (no spouse, domestic partner or children)

Distribution is to parents, sharing equally if both are alive.

Brothers and sisters (no spouse, domestic partner, children or parents)

Distribution is in equal shares to brothers and sisters (if a brother or sister has died and has had children, then those children take their parent's share in equal proportion).

Grandparents (no spouse, domestic partner, children, parents, or brothers and sisters)

Distribution is in equal shares to surviving grandparents.

Uncles and Aunts (no spouse, domestic partner, children, parents, brothers, sisters or grandparents)

Distribution is in equal shares to uncles and aunts (if an uncle or aunt has died and has had children, then those children take their parent's share in equal proportions).

What about assets in joint names?

Joint tenants

When property is owned as joint tenants, it generally passes automatically to the survivor/s upon the death of the other joint owner. As a result, joint property does not form part of a person's estate. It cannot be disposed of by a Will or under the intestacy laws.

Public Trustee does not charge commission on property owned as joint tenants.

Tenants in common

When property is owned as tenants in common, the deceased person's share of the property does not automatically pass to the surviving owner/s. The deceased's share of the property is distributed according to the terms of his or her Will. If there is no Will, the deceased person's share of the property is distributed according to the intestacy laws.

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