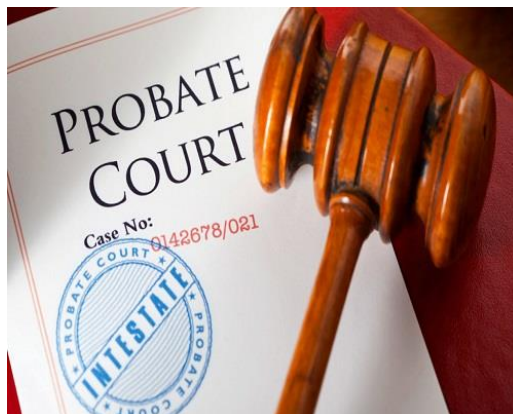




CRIMINAL | DOMESTIC VIOLENCE | FAMILY | CONVEYANCING | WILLS & ESTATE PLANNING

# Wills & Estates

Updated April 2019



## What if I die Intestate

### WORKING FOR YOU

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The Laws of Intestacy in Queensland are set up in the **SUCCESSION ACT 1981 Qld**

If you die without a Will you are said to die intestate. The word “intestate” is derived from the Latin word “intestatus” meaning a person who dies without a Will. If you die with a fully valid Will you are said to die testate.

Intestacy may occur not only where a person fails to make a Will but also for other reasons such as:

- the Will fails to properly dispose of all their assets
- the Will is not valid because it has not been signed and witnessed according to the law
- the person did not have mental capacity to make a Will
- the Will has been poorly drafted and the legal rules of construction have not been followed.

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Sometimes a person may die partly testate and partly intestate. This occurs where part of the Will is valid but part is invalid. This may result in even more inconvenience, delay and expense than administering a full intestate estate.

Looking after intestate matters can be complicated.

You will ask whether you need a Solicitor. Our answer to that is a ‘Yes.’

Firstly a suitable administrator must be appointed by the Supreme Court and you will need to work your way around the necessary documents and submit paperwork to the Courts. That in itself can be a time consuming and costly process.

The administrator’s duties involve arranging the funeral, collecting assets, and distributing them after paying any debts and taxes. The administrator must establish the family tree using certificate evidence which may be an expensive and time-consuming task depending on who are the next of kin or if they live overseas.

Additional problems may arise where the child is a minor or incapable person as your next of kin.

How is my Estate distributed if I die in Qld without a will?

The distribution laws in each State differ slightly but essentially, they are based on the same principle. That of your Next of Kin.

#### **SUCCESSION ACT 1981 - SECT 35**

##### **Distribution of residuary estate on intestacy**

##### **35 Distribution of residuary estate on intestacy**

(1) Subject to *subsection (2)* and division 3, the person or persons entitled to take an interest in the residuary estate of an intestate, and the interest in that estate which that person is or those persons are entitled to take shall be ascertained by reference to *schedule 2* according to the facts and circumstances existing in relation to the intestate.

(1A) For the purposes of this Act—

- (a) the brothers and sisters of the intestate; and
- (b) the grandparents of the intestate; and
- (c) the brothers and sisters of a parent of the intestate; and
- (d) the children of any brothers or sisters of an intestate who predecease the intestate; and
- (e) the children of any brothers or sisters of a parent of an intestate who predecease the intestate;

The formula that will be used is set out in **SUCCESSION ACT 1981 - SCHEDULE 2.**

Feel free to call us to discuss whether we can be of help.

Thank you

John O'Byrne  
Principal Solicitor