



# Let's talk about Intestacy

“ If you die without a valid Will you  
are said to have died intestate. ”



## **Our Vision**

To be Queensland's best provider of trustee and administration services.

## **Our Mission**

To deliver a full range of professional, accessible and reliable trustee, financial and related services in a supportive, compassionate and ethical manner.

## **About The Public Trustee**

We deliver a range of specialist services to the Queensland community including:

- Enduring Powers of Attorney
- Deceased Estate Administration
- free Will making
- property sales
- financial administration for people with incapacity.



## What happens when you die without a **valid Will**?

If you die without a Will, you are said to have died intestate. The Queensland laws of intestacy are outlined in Part 3 of the *Succession Act 1981*, which sets out the entitlements of the next of kin of an Intestate person.

## What are the **Intestacy Rules**?

Intestacy Rules are in place to determine how your Estate will be distributed if you die without a valid Will.

The intestacy rules govern the distribution of your Estate to your next of kin such as your spouse, de facto and issue (children, grandchildren).

If there is no spouse or issue, then provision is made for your parents, brothers and sisters, nephews and nieces, then grandparents, then uncles, aunts and cousins. There is no provision for distribution of your Estate to relatives more remote than your first cousins.

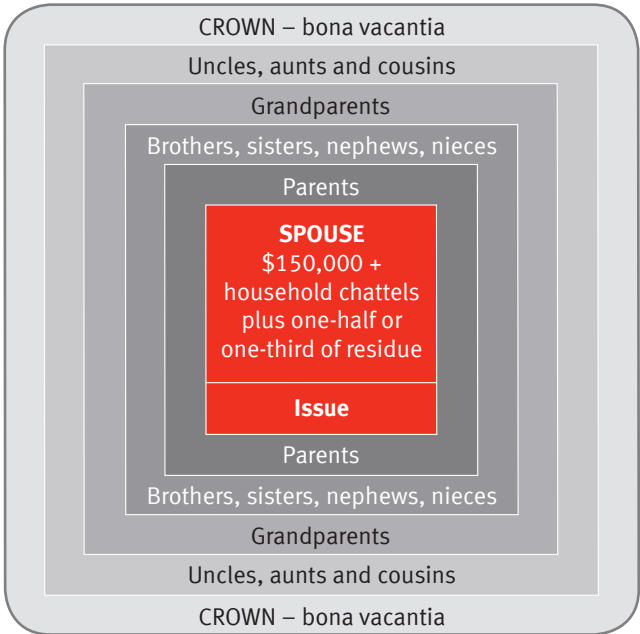
Your in-laws are not classified as next of kin and are not included in the rules for the distribution of your Estate. A step-parent is not next of kin and neither is a mother-in-law or a father-in-law.

The best way to ensure your Estate is distributed to who you would like to benefit, is to make a valid Will and keep it up to date.

# Who administers an Intestate Estate?

The person who takes care of finalising your Estate when you die without a Will is called an Administrator. The duties of an Administrator can include paying debts, collecting assets, finalising tax affairs and distributing the assets in accordance with the Intestacy Rules.

## Diagram of the Intestacy Rules



**Note:** the order of the intestacy rules is represented from the inside boxes moving outwards, inner boxes exclude those in the outer boxes.

## What are Letters of Administration?

An Administrator does not have authority to deal with a Deceased Estate until the Supreme Court of Queensland has granted them Letters of Administration; this is similar to the Grant of Probate to the Executor of a Will.

In most circumstances, financial institutions who hold assets belonging to a Deceased Estate, will not release assets without sighting the Letters of Administration.

The Supreme Court in considering an application for Letters of Administration must be satisfied that the applicant is the appropriate person to administer the Estate.

The *Uniform Civil Procedure Rules 1999* outlines, in descending order of priority, the people who the Court may grant Letters of Administration in instances of intestacy. These are:

- surviving spouse (including a de facto partner)
- children
- grandchildren or great grandchildren
- parents
- brothers and sisters
- children of brothers and sisters
- grandparents
- uncles and aunts
- first cousins
- anyone else the court may appoint.

## How is an **Intestate Estate** distributed?

The Intestacy Rules have been modified several times since 1981. The Intestacy Rules at the date of a person's death determine who is entitled to share in the Estate. For example:

- In May 1998, a de facto partner became entitled to the same rights, as a spouse, in terms of the distribution, of an intestate Estate.
- Since 1981, a beneficiary must survive the intestate person by at least 30 days to be entitled to share in the Estate.

“ A spouse is defined to include the person's de facto partner. ”

## Meaning of a **de facto partner**

The term **de facto partner** is defined as ‘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.’

To share in the Estate of a partner who has died intestate the relationship **must have been in existence** for a continuous period of at least two years **ending on the deceased’s death**.

Since 1 April 2003, the gender of a partner is no longer relevant and the term de facto partner covers same sex couples for deaths after that date.

In deciding whether two people are living together as a couple on a genuine domestic basis, any of their circumstances including the following may be taken into account:

- the nature and extent of common residence
- the length of the relationship
- whether or not a sexual relationship exists or existed
- the degree of financial dependence or interdependence
- ownership use and acquisition of property
- the degree of mutual commitment to a shared life
- the care and support of children
- the performance of household tasks
- the reputation and public aspects of the relationship.

## What effect does **adoption** have?

Where an adoption took place in Queensland after 1936 and a death occurred after 31 July 1965, the adopted person is for all purposes a child of the adopting parents as if the adoptee was born to them in lawful marriage. The adopted person ceases to be a child of their natural parents for succession purposes.

An adopted person has the same rights as any lawful child to the Estates of their adopted parents and the relatives of their adoptive parents, as though they are natural grandchildren, brothers or sisters or nephews and nieces.

When an adopted person dies without a valid Will, their adopting parents and their next of kin have the same rights as if they were the adopted person's natural parents or next of kin. Additionally, the descendants of an adopted person have the same relationship rights as their parent.



## What effect does **illegitimacy** have?

In relation to deaths occurring on or after 1 January 1979, a child born out of marriage has the same rights to share in an Estate as a child born in a marriage.

However, there must be a recognised proof of paternity such as:

- admission of paternity by the father during his lifetime
- establishment of paternity against the father during his lifetime
- a declaration of paternity is made by the Supreme Court after death of the father
- where establishing paternity is to benefit the father, paternity must be admitted or established while the child is living.

## We can **assist** you

The Public Trustee of Queensland has the power to act as Administrator of an intestate Estate when requested to do so by the next of kin or where there are no next of kin.

For a competitive fee The Public Trustee can assist private Administrators, by applying for Letters of Administration on their behalf.

You can also make your Will free of charge with The Public Trustee.

**Please contact your local Public Trustee Office for more details.**

**For more information about Wills**

# Queensland Wills Week



Visit: [www.willsweek.pt.qld.gov.au](http://www.willsweek.pt.qld.gov.au) for real life stories and common myths about Will making and access to news and events.

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This means there are restrictions on how we can use, and when we can disclose, your personal information. When you supply us with your personal information as part of providing us with feedback or lodging a complaint, we will generally use this information only to assist us to address your concerns.

We generally do not disclose your personal information outside of The Public Trustee unless we are required to do so by law or unless you have given us your consent to such disclosure. If you would like to read our Privacy Statement, please visit our website at [www.pt.qld.gov.au](http://www.pt.qld.gov.au)

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