

WHAT HAPPENS IF YOU DIE

without a will?

If a person dies without a valid will, they have died "intestate". This means that the distribution of their estate will be made in accordance with the rules of intestacy as set out in the Administration and Probate Act 1958 (Vic).

There is a common misconception that if you die without a valid will then your estate will pass to the government. However, the distribution of a person's estate if they were to die intestate entirely depends on their relationships and living relatives as at the date of their death.

If a person leaves a spouse and only children of that relationship or otherwise no children at all, that spouse receives the entirety of the person's estate. However, if a person leaves a spouse and children of a previous relationship, then the division of their estate is more complex.

In that situation, the spouse is entitled to a statutory legacy amount plus one-half of the remainder of the estate. As at July 1, 2022, the statutory legacy amount is \$499,210.00 and this amount is adjusted each year. This means if an intestate person's estate is worth \$1,000,000.00, their spouse would be entitled to \$499,210.00 plus one-half of the remaining \$500,790.00. The deceased's children are otherwise entitled to the other one-half of the remaining \$500,790.00.

Another complexity arises where a

person who dies intestate leaves multiple partners and children. This may occur where a person has separated from their spouse but is not yet divorced, and has also entered into a new de-facto relationship.

In that situation, the spouse and the new partner must share in the statutory legacy amount and one-half of the remainder of the estate. The partners can enter into an agreement or seek a Court Order to determine how 'the partners share' is distributed between them. Failing agreement or a Court Order, 'the partners share' is divided equally between the spouse and the new partner. The remaining one-half of the estate is still divided equally between the deceased's children.

There is also provision under the Administration and Probate Act 1958 for how a person's estate would be distributed if they did not leave a spouse or children, but otherwise left parents, siblings, nieces or nephews, grandparents, aunts or uncles or cousins.

It is only if a deceased person did not have any of the above surviving relationships at the date of their death that their estate would pass to the government instead.

It is important to have your own will in place, rather than leaving the distribution of your estate to the default rules of intestacy.

How estates are distributed if a person dies intestate is amended from time to time by legislation, with the most recent amendments having been implemented



The distribution of a person's estate if they die intestate entirely depends on their relationships and living relatives as at the date of their death.

in 2017. It is impossible to know what the rules will be at the time of your death.

The only way to confidently know how your estate will be divided is to have your will prepared and executed with a suitably experienced solicitor.

Wightons Lawyers can assist with all aspects of estate planning, and welcome inquiries to their office by phoning 5221 877 to discuss how they can assist with the preparation of your will and estate planning.

This article is general information only and is not legal advice or a substitution for such advice. Always seek professional advice suited to your own circumstances.

Wightons Lawyers

We'll be there.

With over a century of service to the community our team are dedicated to building and maintaining long lasting relationships which span over multiple generations – we always have been there and we always will be there.

Wightons Lawyers are your local experts for Family Law, Intervention Orders, Wills & Estates, Property Law, Conveyancing and Litigation.

With offices in Geelong, Corio, Ocean Grove & Winchelsea our experienced team has a commitment to delivering services in a prompt, honest and professional manner.

89 Myers St, Geelong | P. (03) 5221 8777
E. legal@wightons.com.au | W. www.wightons.com.au

