

# Did you know?



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17 February 2012

## Intestacy laws in Queensland

This week we focus our minds on intestacy legislation in Australia, in particular, in the state of Queensland.

Based on surveys in other jurisdictions, almost half of all adults do not have a valid will.<sup>1</sup> The Queensland laws of intestacy are outlined in Part 2 of the Succession Act 1981. According to the Act, an intestate means a person who dies and either does not leave a will, or leaves a will but does not dispose effectively by will of the whole or part of his or her property (section 5). The rules in this Act apply to the estate of any person who was living in Queensland at the time of their death and did not leave a will. These rules will also apply to any property that was not covered by a will. Different rules may apply in relation to property that is located outside Queensland or to property in Queensland that belonged to a person who lived elsewhere at the time of his or her death. Bear in mind that the laws of intestacy may be overridden by successful family provision claims.

Upon intestacy, a person (generally a close family member) can apply to the Supreme Court of Queensland for a grant of Letters of Administration to the applicant. The grant then authorises that person to collect the assets of the deceased and distribute them according to Queensland intestacy laws. This would be the remaining estate after payment of the appropriate funeral and administration expenses, debts and other liabilities. To receive a benefit in an intestate estate, a person must survive the intestate by at least 30 days.

### Entitlement to distribution of assets

The legislation provides a specific order of distribution of an intestate estate's assets, depending on the situation:

- Spouse and issue<sup>2</sup>. A spouse of an intestate is a person who was either married to the intestate immediately before the intestate's death, or a de facto partner of the deceased. If there is only one surviving spouse and no issue, the spouse is entitled to the whole of the estate. If there is one surviving spouse and only one surviving child of the intestate, the spouse is entitled to the household chattels<sup>3</sup> and the first \$150,000. Any amount over \$150,000 is divided equally between the spouse and the child. If there is only one surviving spouse and two or more children of the intestate, the spouse receives the household chattels and the first \$150,000. Any amount over \$150,000 is divided:
  - 1/3 for the spouse
  - remaining 2/3 divided equally between the surviving children.
- Issue, but no spouse. The issue is entitled to the whole of the estate. If all the issue survived, they are entitled to the estate in equal shares. For those who did not survive, their share is taken by their surviving issue (children, etc.)
- If no spouse or issue, then assets are distributed in the following order:
  - parents in equal shares, or to a surviving parent
  - surviving brothers and sisters (including half-brothers and half-sisters) in equal shares (or nieces or nephews of deceased siblings of the intestate)
  - grandparents in equal shares, or surviving grandparent

<sup>1</sup> Public Trustee NSW, *PT Connect Issue No. 15, 2008*, page 2

<sup>2</sup> Issue usually means children (included adopted children), but if the child predeceases the intestate leaving children of his or her own, the intestate's grandchildren would take their deceased parent's share, and so on.

<sup>3</sup> Household chattels are defined in section 34A of the Act as "all furniture, curtains, drapes, carpets, linen, china, glassware, ornaments, domestic appliances and utensils, garden appliances, utensils and effects and other chattels of ordinary household use or decoration, liquors, wines, consumable stores and domestic animals owned by the intestate immediately before the intestate's death." They do not include "a motor vehicle, boat, aircraft, racing animal, original painting or other original work of art, trophy, clothing, jewellery, or other chattel of a personal nature."

- surviving aunts and uncles in equal shares (or cousins of deceased aunts or uncles of the deceased).

If the above categories of entitled persons are exhausted, the estate is *bona vacantia* (vacant goods) and is paid to the Crown.

### **Spouses and de facto partners**

The Act and related legislation define spouse as the husband or wife of the deceased at the time of the latter's death or a de facto partner, defined as either one of two persons who had been living together as a couple on a genuine domestic basis for a continuous period of at least two years ending on the deceased's death (but who are not married to each other or related by family). Since 2003, this has also included same-sex couples.

The Act specifically contemplates that, at the time of his or her death, a deceased may have more than one spouse (for example, both a legal wife or husband and a de facto partner). In those circumstances the Act provides for three ways that the distribution of assets may be made:

1. By written agreement between the spouse and de facto about distributing the entitlement between them (a distribution agreement); or
2. By order of the Supreme Court distributing the entitlement between the spouse and the de facto (a distribution order); or
3. In equal shares as decided by the personal representative if the personal representative has not been provided with a distribution agreement or an application for a distribution order after having given three months notice to the spouse and de facto of their rights in relation to the above options.

### **Intestacy and life insurance**

Whilst intestacy laws try to reflect community expectations as regards intestate distributions, they are no substitute for having a will. However, to assist clients who have not made a valid will, advisers can structure their life insurance to include a beneficiary nomination (both outside and inside super) to ensure these proceeds go directly to beneficiaries, bypassing the will (or lack of one) and possible delays in probate. In Queensland, these nominations have the added advantage of not being subject to family provision claims.

## **Summary**

Intestacy laws in Queensland differ from those in other states and territories, and the legislation provides for a specific order of distribution of an intestate estate's assets. Whilst no substitute for having a will, beneficiary nominations is something that advisers can assist their clients with in respect of life insurance distributions.

### **Important information**

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