

Changes to Intestacy Law

Is the Deceased Intestate?

A person who dies without leaving a will is said to have died intestate, and the estate passes to the next of kin. Intestacy can also occur where the deceased leaves a will that does not distribute all of the estate or where the will is found defective.

Important Terms

The term 'partner' includes a person who was married to or in a registered or unregistered domestic partnership with the deceased immediately before the deceased's death. There is a minimum requirement that an unregistered partner has lived with the deceased for a continuous period of at least two years before the deceased's death.

The term 'children' includes biological, step or adopted children.

Previous Legislative Position

The intestacy laws in Victoria can result in the deceased's partner suffering significant financial difficulty on top of the already heavy burden of losing a loved one.

When a person dies without a will and leaves a partner and no children, the partner is entitled to the whole of the deceased's estate.

However, if the deceased leaves a partner and children, the partner is entitled to the deceased's personal chattels, the first \$100,000.00 of the estate and one third of the balance of the deceased's estate. The remaining portion of the deceased's estate, being two thirds, is gifted to the children of the deceased, and if more than one, in equal shares.

New Legislative Position

The Victorian Law Reform Commission 2013 Succession Laws Report identified that the current legislative position for intestate matters was unjust and impracticable. As such, the law changed on 1 November 2017.

When a person dies without a will and leaves a partner and no children, the partner is entitled to the whole of the deceased's estate.

If the deceased leaves a partner and children of that relationship, the partner will be entitled to the whole of the deceased's estate.

When the deceased dies leaving a partner and children born of a different relationship, the partner will receive all the deceased's personal chattels, the statutory legacy amount and one half of the balance of the deceased's estate. The children of the deceased are entitled to the remaining one half of the deceased's estate, and if more than one, in equal shares. The statutory legacy amount is declared by the Minister in any given financial year and is published in the Government Gazette. The statutory legacy amount is currently set at \$451,909.00 and is adjustable by the responsible Minister annually.

The partners can enter into a distribution agreement where the deceased leaves more than one current partner. If the partners cannot agree on the estate distribution, then an order will need to be sought from the Supreme Court of Victoria.

If the deceased has left no partner but children, the estate is divided equally amongst the children; however, if one of the children has predeceased their parent, then the deceased child's share will pass to their children, if any.

If the deceased dies without a partner or children, then the estate is divided equally between the parents of the deceased, and if no parents survive the deceased, then equally between siblings, if any.

What can you do?

Even though the new intestacy laws provide better financial security to partners, a will is still the best way to protect your estate and deal with the complexities that arise due to new age family structures.

Contact

For further information on intestacy or making a will, please contact us at admin@ballaratlawyers.com.au or on 5303 0281.

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