

WHAT HAPPENS IF I DON'T MAKE A VALID WILL?

Where a deceased person has died without leaving a will or a valid will, the estate of the deceased person will be distributed as follows:

1. If the deceased leaves a spouse or domestic partner, the whole of the estate passes to the surviving spouse or domestic partner provided there are no children of the deceased from another relationship.
2. If the deceased leaves a spouse and a domestic partner (and no children from another relationship) the spouse and the domestic partner share the whole of the estate in equal shares.
3. If the deceased has spouse and/or domestic partner and a child or children other than to the spouse or the domestic partner, the estate is shared as follows:
 - (a) \$350,000.00 (subject to CPI adjustment) plus interest, personal effects and one half of the residue (if any) to the spouse or domestic partner or shared by spouse and domestic partner in equal shares;
 - (b) Children will share the remaining one half of the residue (if there is any) in equal shares.
4. Where there is no surviving spouse and no domestic partner but there are children, the children will receive equal shares of the estate.
5. Where the deceased leaves no spouse, no domestic partner and no children, the parents of the deceased get equal shares of the estate, or if only one parent is alive, the whole of the estate goes to that surviving parent.
6. If the deceased does not leave any spouse, children or parents, members of one of the following classes will receive the whole estate in equal shares (in order of priority):
 - (a) Brothers and sisters
 - (b) Children of brothers and sisters.
 - (c) Grandparents
 - (d) Uncles and Aunts or if the Uncles and Aunts predecease the deceased yet leave children, the children of the Aunts and Uncles.
7. If there is no one in the categories listed, the estate passes to the State of New South Wales.

Things to note:

1. A domestic partner is defacto husband or wife or a person who is in a domestic relationship with the deceased person immediately before the deceased's death. The criteria for establishing the existence of such a relationship is set out in the Property (Relationships) Act, 1984 and extends to same sex couples.
2. There can be agreements between possible beneficiaries or Court orders made that may vary the division of assets set out above.
3. If the estate is to pass to the State of New South Wales, submissions can be made to the State Government seeking payment of the estate to appropriate persons.