



Reading time only 6 minutes

TURNBULL HILL LAWYERS

INTESTACY INFORMATION

This document is a general summary of contested estate legislation in NSW. Please read it carefully.

RULES OF INTESTACY

Intestacy occurs when someone dies without leaving a valid will.

Generally speaking, if a person dies intestate or without a valid will then the people entitled to the estate are (in order of priority): the spouse and children, parents, grandparents, siblings, aunts, uncles and finally (if there is no one in the earlier categories) the New South Wales government. A person dies 'intestate' if they die without leaving a valid will. Commonly, people die intestate in the following circumstances:

1. If they have never made a will.
2. If they have made a will, but later revoke it without making a replacement will.

3. If they have made a will, but married after the will was made, in which case, the will is usually revoked.
4. If they have attempted to make a will, but the document was not signed and witnessed as required by the law, and the Probate Court is not satisfied the person intended the document to operate as their will.

Below is a table of distributions to assist you to understand how an intestate estate is treated under the law. Please note, if death occurred before 1 March 2010, different laws and rules apply.



TABLE OF DISTRIBUTIONS

Note: In the table below:

- "children" includes biological and adopted children.
- "spouse" in the table below includes married and defacto.

SURVIVED BY.....	Rules where a death occurs on or after 1 March 2010
Spouse and no children	Whole estate to spouse
Spouse and children, where <u>all</u> children are the children of the deceased and surviving spouse	Whole estate to spouse
Spouse and children (where <u>one or more</u> children are <u>not</u> children of the surviving spouse)	<p>Spouse receives: personal effects, \$350,000 (CPI adjusted) and one half of the remainder of the estate.*</p> <p>Children receive: the remainder of the estate equally between them.</p> <p>* Spouse can elect to acquire particular assets from the estate up to the value of the spouse's share based on the above formula. If the spouse wishes to acquire assets worth more than their share, they must pay for the balance from their own funds. Therefore the spouse no longer has the right to take the marital home if it is worth more than their</p>

	<i>entitlement, unless the excess amount is paid into the estate by the spouse.</i>
Two spouses (eg. a de facto partner and a married spouse from whom the deceased was separated but not divorced) and <u>no</u> children	<p>If the de facto relationship was for less than 2 years, the married spouse takes the whole estate.</p> <p>If the de facto relationship was for more than 2 years and continued up to the death, the married spouse and de facto spouse together share the whole estate either:</p> <ol style="list-style-type: none"> 1. Pursuant to an agreement between the spouses. 2. As ordered by the Court; or 3. In default of agreement or court order, they take half of the estate each.
Two spouses (eg. a de facto partner and a married spouse from whom the deceased was separated but not divorced) and children, where <u>all</u> children are children of the deceased and one or both spouses	<p>If the de facto relationship was for less than 2 years, the married spouse takes the whole estate.</p> <p>If the de facto relationship was for more than 2 years, the married spouse and de facto spouse together share the whole estate either:</p> <ol style="list-style-type: none"> 1. Pursuant to an agreement between the spouses. 2. As ordered by the Court; or 3. In default of agreement or court order, they take half of the estate each. <p>The children receive no entitlement.</p>
Two spouses (eg. a de facto partner and a married spouse from whom the deceased was separated but not divorced) and children, where <u>one or more</u> children are <u>not</u> children of the surviving spouses	<p>Assuming the de facto relationship was for more than two years, the spouses share between them: personal effects, \$350,000 and one half of the remainder of the estate either:</p> <ol style="list-style-type: none"> 1. Pursuant to an agreement between the spouses. 2. As ordered by the Court. 3. In default of agreement of court order, half each. <p>Children receive: the remainder of the estate equally between them.</p>
Children (no spouse)	The children share the estate equally. If any children of the deceased have died leaving children of their own, then those children (being grandchildren of the deceased) take the share of the estate their parent would have received.
Parents (no spouse and no children)	The parents of the deceased share the estate equally. If only one parent survives the deceased he or she takes the whole estate.
Brothers and sisters (no spouse, children or parents)	All brothers and sisters share the estate equally, regardless of whether they are full blooded or halfblooded siblings.

	If any brother or sister died leaving children, then those children (being nieces and nephews of the deceased) take the share their parent would have received.
Grandparents (no spouse, children, parents, brothers or sisters)	The grandparents share the whole estate between them equally. If only one grandparent survives, they take the whole estate.
Aunts and Uncles (no spouse, children, parents, brothers, sisters or grandparents)	<p>The uncles and aunts (who are brothers or sisters of a parent of the deceased) share the whole estate between them.</p> <p>There is no distinction between halfblooded and full blooded brothers and sisters of a parent of the deceased. All are entitled to share in the estate.</p> <p>If an uncle or aunt dies leaving children, those children (being cousins of the deceased) are entitled to the share their deceased parent would have received.</p>
The NSW Government	If there is no one in any of the earlier categories, the NSW Government is entitled to the whole estate.

Note: A family provision claim may still be made against an intestate estate if an eligible person has been left without adequate provision.

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