



**PARSONS**LAW  
WILLS & ESTATES

## INTESTACY

### WHAT WILL HAPPEN IF YOU DIE WITHOUT A VALID WILL?

If you die without leaving a valid Will, your estate will be dealt with under the Rules of Intestacy. In Queensland, these rules are outlined in Part 3 of the *Succession Act 1981*.

### WHO IS ENTITLED TO YOUR ESTATE ON INTESTACY?

The manner in which your estate will be distributed, if you die without a valid Will, will depend upon the next of kin who survive you. In particular, Part 1 of Schedule 2 of the *Succession Act 1981*, provides for how the estate would be distributed if you are survived by one or more spouses. Part 2 of Schedule 2, provides for how the estate would be distributed if you are not survived by a spouse.

As the Intestacy Rules have been updated from time to time, who is entitled and importantly, who is considered your spouse, will also depend upon the relevant date of death.

An extract of the current provisions of Schedule 2 of the *Succession Act 1981* (Qld) are set out on the following page.

### WHAT ARE LETTERS OF ADMINISTRATION?

Where a person dies without leaving a valid Will, in most circumstances it will be necessary to apply to the Supreme Court for a Grant of letters of administration. This is similar to a Grant of probate to the executor of a Will and gives the administrator the legal authority to deal with the deceased person's estate.

The person who is entitled to apply for a Grant of letters of administration will also depend upon the next of kin who have survived the deceased person. A descending order of priority is set out in the *Uniform Civil Procedure Rules 1999* (Qld). This includes the surviving spouse, children, grandchildren or great grandchildren, parents, brothers and sisters, children of brothers and sisters, grandparents, uncles and aunts, first cousins and anyone else that the Court may appoint.

### WHY SHOULD YOU MAKE A WILL?

By making a Will, you can decide who should take care of finalising your estate when you die and also who are to be the beneficiaries of your estate assets.

You can find out more general information about making a Will, Enduring Powers of Attorney and Estate Planning from our website: [www.parsonslaw.com.au](http://www.parsonslaw.com.au) or by contacting our office directly.

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*This publication is for information only and is not legal advice. You should obtain advice that is specific to your circumstances and not rely on this publication as legal advice. If there are any issues you would like us to advise you on arising from this publication, please let us know.*

## SUCCESSION ACT 1981 (QLD) - SCHEDULE 2 - DISTRIBUTION OF RESIDUARY ESTATE ON INTESTACY

### Part 1 Intestate survived by spouse

Circumstance	Way in which the intestate's residuary estate is to be distributed
1. If the intestate <i>is not</i> survived by issue	1. If there is only 1 surviving spouse, the spouse is entitled to the whole of the residuary estate.
	2. If there is more than 1 surviving spouse, they are entitled to the whole of the residuary estate in accordance with section 36.
2. If the intestate <i>is</i> survived by issue	1. If there is only 1 surviving spouse, the spouse is entitled to—
	(a) \$150000 and the household chattels; and
	(b) the following part of the residuary estate then remaining—
	(i) if there is only 1 child of the intestate who survived, or who did not survive but left issue who survived, the intestate—1/2;
	(ii) otherwise—1/3.
	2. If there is more than 1 surviving spouse, they are entitled, in accordance with section 36, to—
	(a) \$150000 and the household chattels; and
	(b) the following part of the residuary estate then remaining—
	(i) if there is only 1 child of the intestate who survived, or who did not survive but left issue who survived, the intestate—1/2;
	(ii) otherwise—1/3.
	3. The issue of the intestate are entitled to the balance of the residuary estate in accordance with section 36A.

### Part 2 Intestate not survived by any spouse

Circumstance	Way in which the intestate's residuary estate is to be distributed
1 Where the intestate is survived by issue	The issue are entitled to the whole of the residuary estate in accordance with section 36A.
2 Where the intestate is not survived by issue but is survived by a parent or both parents	The parent is entitled to the whole of the residuary estate or, if both parents survive the intestate, the parents are entitled to the whole of the residuary estate in equal shares.
3 Where the intestate is not survived by issue or by a parent but is survived by next of kin	The next of kin are entitled to the residuary estate in accordance with section 37.
4 Where the intestate is not survived by issue, by a parent or by next of kin	The residuary estate shall be deemed to be bona vacantia and the Crown is entitled to it.