

Dying without a will



This information sheet outlines the law about what to do when a person dies either:

- without leaving a will, or
- leaving a will that, for some reason, does not cover all of their property (estate).

In this information sheet, the word “estate” means all the land, property and assets of a deceased person.

What is intestacy?

A person dies “intestate” when:

- they die without a will, or
- they die with a will that does not cover all of their property.

What happens to the property if someone dies without a will?

By failing to make a will, a deceased person will have no say in how their estate is distributed. It is distributed according to law.

After the payment of the deceased’s debts, certain legal rules state how an estate is to be divided. These rules may not reflect the deceased’s wishes.

An application to the Probate Office of the Supreme Court may need to be made to get authority to administer and distribute the estate. This depends on how much the estate is worth. The deceased’s next of kin usually makes the application.

For any person of Aboriginal descent who met the now deleted qualification requirement of the *Aboriginal Affairs Planning Authority Act 1972* (WA) [AAPA Act] and who died without a will before 7 August 2013 when the AAPA Act changed, by operation of the AAPA Act, the estate vests in the Public Trustee. Persons entitled to distribution under the AAPA Act are **not** permitted to apply for letters of administration. If a former

relative of yours was covered by this contact the Public Trustee for more information.

From 7 August 2013 the same scheme for distributing intestate estates under the *Administration Act 1903* (WA) applies to Aboriginal and non-Aboriginal people.

Without a will it may be hard to work out who should apply for permission to administer the estate.

What if I am not sure where the will is?

It is important to find the will of the deceased. Useful places to check are:

- among the personal papers and belongings of the deceased
- the bank
- the deceased’s insurance company
- the deceased’s lawyer
- the deceased’s accountant
- the Public Trustee
- trust corporations such as Perpetual Trustees WA Ltd.

If you still cannot find a will you may have to advertise in the daily newspaper.

The deceased will have died intestate if all attempts fail and a will is not found.

Who inherits where there is no will?

The *Administration Act 1903* (WA) sets out how the estate will be shared out. The rules are complicated and vary depending on:

- the value of the estate, and
- the relationship to the deceased of the surviving “next of kin” (spouse, children, grandparents, parents, brothers and sisters and their children).

De facto partners of any sex now have inheritance rights under the *Administration Act 1903* (WA). You will need to establish your relationship was a de facto relationship. If you lived as a de facto partner with the deceased for at least two years immediately before their death you are entitled to a share in the estate in certain circumstances. If your partner dies without a will, you should seek legal advice about your rights.

If you are a **child of the deceased** and your parents were never married it won't necessarily affect your right to claim part of the estate. In some cases you may be required to prove the relationship to the Probate Office. Get legal advice about this.

In some circumstances a parent may be the same sex partner in a de facto relationship. If you think this affects you get legal advice.

It is only when a person dies without a will and no next of kin that their estate will be handed over to the State.

For any person of Aboriginal descent as referred to above who died **before 7 August 2013** without a will, by operation of the AAPA Act there are different rules about how the property is to be shared out.

In these cases where there is no person entitled to the property of the deceased and no valid claim is made to the balance of the property within two years after the death of the deceased, an application can be made to the Governor for an order that the balance be distributed amongst persons having a moral claim. Legal advice should be obtained.

It is only where no such order is made that the Public Trustee vests the property in the Aboriginal Affairs Planning Authority to be used for the benefit of persons of Aboriginal descent.

What process is followed if someone dies without a will?

Where a person has died without a will an application is made for “Letters of Administration”. The application is made at the Probate Office of the Supreme Court. Anyone over the age of 18 and entitled to a share in the estate can apply.

You cannot apply for “Letters of Administration” until 14 days after death.

If the application is successful the court grants “Letters of Administration” to someone who then has the authority to deal with the estate as administrator.

If the gross value of the estate is not more than \$10,000 see the heading **Are the requirements different for small estates?** below.

To apply you must complete and lodge the necessary documents and pay a prescribed fee.

You may need a lawyer to help you make your application.

Sometimes no one is willing to administer the estate. In these circumstances the Public Trustee or a trust corporation may be authorised to administer the estate.

What are the duties of an administrator?

The main duties of the administrator are to:

1. Gain control of the property of the deceased.
2. File a list of the assets of the estate and their value.
3. Pay the funeral expenses, taxes and other debts of the deceased.
4. Prepare a final account showing all payments into and out of the estate and how the assets of the estate have been dealt with.
5. Distribute the estate of the deceased according to law.

An administrator must be at least 18 years of age. The administrator must oversee the estate as required by law. The administrator can be held personally liable for failing to do so.

Are the requirements different for small estates?

An administrator does not always have to be appointed to wind up the deceased's estate.

A surviving spouse or other next of kin may be able to distribute the estate without obtaining "Letters of Administration". This may be possible if:

- the value of the assets is small, and
- consists only of household goods and small sums of money.

Where a bank or building society is holding \$6,000 or less of the deceased's money they are authorised to:

- use the money for the payment of funeral expenses of the deceased, and
- to pay the balance to the surviving spouse, parent or child.

Check with the deceased's bank about this.

When you are working out the gross value of the estate you do not include:

- assets held in joint tenancy with the deceased
- proceeds of life assurance policies unless they are left to the estate.

If an estate is a small one (the gross value does not exceed \$10,000) the manager at the Probate Office may sometimes be able to help you make your application. The only payments you need to make are court fees to the Probate Office.

The staff at the Probate Office **cannot** give you legal advice.

It may be helpful to contact the **Probate Office** on **(08) 9421 5152** to see whether you will be able to get help, and if so what documents you need to take with you.

Can the court change the way an estate is divided?

The Supreme Court has the power to change the way the *Administration Act 1903* (WA) distributes an estate. This power comes from the *Family Provision Act 1972* (WA).

Certain people who were dependants of the deceased person can apply to the Supreme Court. The application is made on the basis that their needs have not been properly looked after.

The application must be made within six months of the grant of letters of administration. In some circumstances this time may be extended. Extensions of time are rare.

An **Information sheet: Challenging an Unfair Will** is available from all Legal Aid WA offices.

Where can I get more information?

- Contact the **Public Trustee WA** on **1300 746 116** for assistance with deceased estate administration.
- Contact the [Citizens Advice Bureau](#) (CAB) on **(08) 9221 5711** for assistance in drafting letters of administration for a fee. On the CAB website you can also view a video on letters of administration and FAQs.
- Contact the **Law Society of WA** on **(08) 9324 8600** for a referral to a lawyer who specialises in this area.
- For information about the **Probate Office** and fees payable, visit the website of the **Supreme Court of Western Australia** www.supremecourt.wa.gov.au and click on the left menu FAQs-Probate link.
- Visit the **Artists in Black** website www.aitb.com.au/info-hub for information on wills and estates.
- Some community legal centres may be able to assist. Contact your local one to see if they can assist you. Visit this website to find out contact details: www.communitylaw.net

Legal Aid WA Offices

TELEPHONE INFOLINE: 1300 650 579 (General Enquiries)
Infoline open Monday to Friday 9.00 am to 4.00 pm
(Australian Western Standard Time) except public holidays

Translating and Interpreting Service 131 450
National Relay Service (for hearing and speech impaired) 133 677

www.legalaid.wa.gov.au

Perth Office

32 St Georges Terrace, Perth, WA 6000
1300 650 579
(08) 9261 6222

Southwest Regional Office

7th Floor, Bunbury Tower, 61 Victoria Street, Bunbury, WA 6230
(08) 9721 2277

Great Southern Regional Office

Unit 3, 43-47 Duke Street, Albany, WA 6330
(08) 9892 9700

Goldfields Regional Office

Suite 3, 120 Egan Street, Kalgoorlie, WA 6430
(08) 9025 1300

Midwest & Gascoyne Regional Office

Unit 8, The Boardwalk, 273 Foreshore Drive, Geraldton, WA 6530
(08) 9921 0200

Pilbara Regional Office

28 Throssell Road, South Hedland, WA 6722
(08) 9172 3733

West Kimberley Regional Office

Upper Level, Woody's Arcade, 15-17 Dampier Terrace, Broome, WA 6725
(08) 9195 5888

East Kimberley Regional Office

98 Konkerberry Drive, Kununurra, WA 6743
(08) 9166 5800

Indian Ocean Office

Administration Building, 20 Jalan Pantai
Christmas Island, Indian Ocean, WA 6798
(08) 9164 7529

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