



NO WILL. NO SAY.

A guide to Victoria's Intestacy provisions.



What happens to your assets if you die without a will?

If you die without a will you die “**intestate**”. Your assets will be distributed in a particular way as set out in Victorian legislation (“**intestacy provisions**”).

Set out below is a summary of the intestacy provisions. It shows who is entitled to receive your estate (i.e. your net assets after your debts have been paid). You will be able to find a scenario that fits your circumstances. If you don’t, let us know and we can advise you what will occur in relation to your personal situation.

Who is a partner?

Your “**partner**” includes a person who you:

- are married to (“spouse”);
- are in a registered or unregistered domestic partnership with (“domestic partner”); or
- are in a registered caring relationship with (“registered caring partner”)

at the time of your death.

There is a minimum requirement that you lived with an unregistered partner for a continuous period for at least two years prior to death or the relationship has resulted in the birth of a child.

You can have multiple partners. If so, those partners may all receive a portion of your estate.

Scenario 1- One partner and no children:

Your **partner** will receive your whole estate.

Scenario 2 – One partner and one or more children (of that relationship):

Your **partner** will receive your whole estate.

Scenario 3 – One partner and one or more children (of different relationships):

If your estate has a value of less than \$451,909* your **partner** will receive your whole estate.

If your estate is worth over \$451,909:

- your **partner** will receive your personal effects plus \$451,909 plus interest plus half of the remaining balance of your estate; and
- the remainder of the estate will be divided equally between your **children who are not the offspring of your partner**. If any of those children have died leaving children of their own, **the children of that deceased child** will receive an equal share of what the deceased child would have received).

This includes all children (born of different relationships)) no matter what age they are and whether or not they are living with you at the time of your death and even a child from whom you may have been estranged for some time.

* this sum is correct as at 5 April 2018

Scenario 4 – More than one partner and no children

If you die leaving **multiple partners** (e.g. a spouse/domestic partner and registered caring partner) your estate will be divided among those partners according to the terms of:

- I. Any agreement your partners reach between themselves; or
- II. A court order (following an application made by any of your partners); or
- III. (If there is no agreement and no court order) equally between your partners

Scenario 5 – More than one partner and one or more children (of those relationships)

If you die leaving **multiple partners** and a child or children (of those partners), your estate will be divided among your partners as set out in Scenario 4 above.

Scenario 6 – More than one partner and one or more children (of different relationships):

If you die leaving **multiple partners** and a child or children (who are not the offspring of the people who are your partners at the time of your death), your estate will be divided as follows: (subject to any distribution agreement between the partners, or distribution order by the Court):

- I. If your estate has a value of less than \$539,100*, your **partners** will share in your whole estate as set out in Scenario 4 above.
- II. If your estate is worth over \$539,100:
 - i. Your personal effects, \$539,100* plus interest (calculated at the legacy interest rate from the date of the death) plus one half of the balance will be divided among your **partners** as per Scenario 4 above; and
 - ii. The remaining half of your estate will be divided among your **children from people who are not partners at the date of your death**. If any of those children have died leaving children of their own, **the children of that deceased child** will receive an equal share of what the deceased child would have received)

* this sum is correct as at 31 July 2023

Scenario 7 - No partner, one or more children:

Your estate will be divided equally between your **children**.

If any of your children have died leaving one or more children of their own (i.e. your **grandchildren**), then those children will receive their deceased parent's share of your estate.

Scenario 8 - No partner, no children:

Your estate will be distributed equally between your **parents**.

If none of your parents are living your estate will be distributed equally between your **brothers and sisters** (whole or half-siblings). If any of your brothers and sisters have died leaving one or more children of their own (i.e. your **nieces and nephews**), those children will receive their deceased parent's share of your estate equally between them.

If none of your brothers, sisters, nieces or nephews are living your estate will be distributed equally between your **grandparents**.

If none of your grandparents are living your estate will be distributed equally between your **aunts and uncles**.

If none of your aunts or uncles are living your estate will be distributed equally between your **cousins**.

If there are no cousins living your estate will be distributed to the **Crown** (i.e. the Government).

What to do:

If you do not have a valid will, you have no control over the distribution of your assets upon your death. Your assets will be distributed in accordance with the intestacy provisions.

To avoid the application of the intestacy provisions, ensure that you have a valid will in place.

Our Succession Planning Lawyers

At Burke Lawyers we have a team of succession planning lawyers who can assist you with your succession plan.

Susan Bonnici

Susan is an Australian Legal Practitioner with over thirteen years of experience working in estate planning, estate administration and trustee services.

Contact Susan at: sbonnici@burkelawyers.com.au

Find out more about Susan: www.burkelawyers.com.au/susan-bonnici

Arianna Kim

Arianna assist clients with a range of services including estate planning, probate and estate disputes. Fluent in English and Korean, Arianna is also available to assist with Wills and Estate requirements when a second language is necessary.

Contact Arianna at: akim@burkelawyers.com.au

Find out more about Arianna: www.burkelawyers.com.au/arianna-kim

Luke Palmer

Luke has years of experience in wills and estates with a particular focus on the administration of deceased estates and the various issues that can arise during that process.

Contact Luke at: lpalmer@burkelawyers.com.au

Find out more about Luke: www.burkelawyers.com.au/luke-palmer

Meghan Warren

Meghan has over 15 years of experience with assisting medical and health professionals with their wills and estates requirements. Meghan is also one of the few lawyers admitted in the State (Victoria), Federal jurisdictions of Australia and as an Attorney at Law to the New York State Bar in the United States.

Contact Meghan at: mwarren@burkelawyers.com.au

Find out more about Meghan: www.burkelawyers.com.au/meghan-warren

