



If there's no Will, is there a way?

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How does an Estate get dealt with if there's no Will?

If someone dies without a Will, also called 'intestate', their Estate gets divided under the Administration Act 1969. They don't have any control over who handles their affairs or how their property gets divided.

Since no-one has been named by the deceased as their executor, an application has

to be made to the Court to appoint an administrator. People who have a beneficial interest in the Estate are entitled to be appointed administrator, and the Court follows an order of priority that starts with the surviving spouse or de facto partner (subject to some exceptions), the deceased's children, and then more remote family members.

The Administration Act also says how the Estate gets divided, depending on who is in the deceased's family. The outcomes under the Administration Act might be very different from what the deceased would have intended.

For example, if the deceased wanted their spouse or partner to get all of their Estate, that might not happen:

- If the deceased has a spouse or partner and children, the residue of the state will be divided with the deceased's children receiving two thirds of the residue.
- If the deceased has a spouse or partner and no children, one third of the residue of their Estate goes to the deceased's parents.

This can be difficult for the surviving spouse or partner to manage, especially where the family home is the biggest asset. They may need to sell the family home or take on debt in order that the children or parents receive their share. If there are young children, trustees will be needed to look after their share of the Estate.

To have control over what happens to your Estate, you need to have a Will. To prepare a Will, please contact Melanie Forsman. If you would like to talk to someone about managing an Estate, please contact Laura McLoughlin-Ware.