

ASK THE PROFESSIONALS

Ask a Lawyer

Question: What happens if I die without a Will?

If you die without a Will you have died “intestate”. When you die intestate then it is very likely that an Administrator will be appointed by the Court. Obviously, the deceased person will have had no say as to whom that person is and that Administrator will also have no say as to how your estate is distributed. Distribution, when one dies intestate, is very rigid. The Devolution of Estates Act specifically sets out how your estate is to be distributed. For example:

- If you die leaving a widow and no children, your estate would go to your widow;
- If you die leaving a widow and one child, your widow would receive any marital property and $\frac{1}{2}$ of the remainder of your estate. Your child would receive the remaining $\frac{1}{2}$;
- If you die leaving a widow and children, the widow receives any marital property, $\frac{1}{3}$ of the remainder of your estate. Your children would share the remaining $\frac{2}{3}$ of your estate;
- If you die leaving only children then the estate would be divided equally among them;
- If you die having parents still alive but no spouse or children then $\frac{1}{2}$ of your estate would go to your mother and $\frac{1}{2}$ would go to your father, or to the survivor of them;
- If you die leaving only brothers and sisters then your estate would be divided equally among your brothers and sisters; if a brother or sister is dead then the children of that deceased brother or sister would take that share;
- If you die leaving only nephews and nieces then the estate would be divided equally among your nieces and nephews;
- If you die having what would be classified as next of kin but no spouse, children, parents, brothers, sisters, nieces or nephews, then the estate would be divided equally among those next of kin;
- If you die having no lawful heirs then your estate would go to the Crown.

On the other hand preparation of a Will gives you flexibility as to “who” will receive what and you also have more flexibility as to what you may do such as setting up a trust for the benefit of certain beneficiaries. A legal Will obviously lessens the chance of people or families fighting over the estate after your death.

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