



BRIESE LAWYERS FACTSHEET CAN YOU AFFORD NOT TO UPDATE YOUR WILL?



Should you die without a Will, your estate will most likely be divided according to a formula set down by the Queensland Government. This formula may not reflect your wishes and will most likely cause undue hardship, cost and delay for your family.

If a person dies without a valid Will, they are said to have died 'intestate'. Partial intestacy arises where a person does have a Will, but it is not drafted properly and does not effectively distribute their entire estate. The number of court cases involving Wills in Queensland has increased significantly over past few years.

CONSEQUENCES OF NOT HAVING A VALID WILL

The consequences of dying intestate can be disastrous. At the very least, your estate and beneficiaries will incur greater than normal costs in administering and distributing your estate and they may pay some unnecessary tax. At worst, your estate may be distributed to unintended beneficiaries, or result in a prolonged, bitter and expensive Court battle over who gets what. In any event, dying intestate means that there could be significant delays in the final distribution of your estate. Should you die intestate, legislation will determine how your estate will be divided between your family members.

Another consequence of dying intestate is that if a deceased has died intestate and they were separated from their de facto partner or spouse (whom they have not yet divorced), then the de facto partner or spouse will share in the deceased's estate under the intestacy rules despite them not being in a relationship at the time of death.

Legislation will determine how your estate is distributed

If you die intestate, distribution of your estate will be determined by a formula set down in legislation. The general rule is that your spouse will be entitled to part of the estate, as will your descendants, and if you do not have a spouse and children, then your next of kin (parents and siblings, nieces and nephews). If you have no spouse, descendant or next of kin, then the state government will inherit your estate.

This legislation identifies your closest relatives as the main beneficiaries. The rules contained in the legislation make assumptions about who you are closest to and do not therefore take account of your individual circumstances.

Under Queensland's intestacy rules, if you die without a Will, your estate will be distributed as follows:

- if you are married with no children, your spouse receives 100% of your estate.
- if you are married with one child, your spouse receives household contents and the first \$150,000. Any amount over \$150,000 is divided equally between your spouse and your child. In the event that your child is under 18 years of age, their share will be held on trust by the Public Trustee until they reach the age of 18.
- if you are married with two or more children, your spouse receives household contents and the first \$150,000. Any amount over \$150,000 is divided:
 - 1/3rd for your spouse; and
 - the remaining 2/3rds divided equally between your surviving children.



**BRIESE
LAWYERS**

**303 Margaret St
(PO Box 1945)
TOOWOOMBA QLD 4350
Ph: 0746384833
Fax: 0746381833**

Email: admin@brieselawyers.com.au
Website: www.brieselawyers.com.au



BRIESE LAWYERS FACTSHEET CAN YOU AFFORD NOT TO UPDATE YOUR WILL?



Examples

1. Christopher (31) and Rebecca (22) are married and have no children when they die in a car accident. Neither of them have a Will. Their primary asset is the house they own as joint tenants. In Queensland, for the purposes of property owned in joint tenancy, when a couple dies simultaneously the youngest is deemed to have survived. As the youngest of the couple, Rebecca is deemed to have survived Christopher and therefore Christopher's interest in their house passes to Rebecca and her estate. Under the intestacy rules, Rebecca's estate (which now includes Christopher's share of the house) passes on to Rebecca's parents and Christopher's parents do not receive any distribution in relation to the house.
2. Greg recently separated from Michelle, who was Greg's second wife. Greg has four children from his previous marriage. Greg does not have a Will and when he dies, his estate is worth \$1,000,000.00. The rules of intestacy mean that:
 - Michelle (his estranged wife) will receive the first \$150,000.00 plus 1/3 of the remaining estate (\$283,333.00 out of the remaining \$850,000.00)
 - each of Greg's children will share equally in the remaining two thirds of the estate and receive \$141,666.75 each, held on trust until they turn 18 years old.

Appointment of Administrator

If you die intestate, there is no clearly identified person appointed to deal with your estate and an administrator will need to be appointed by the Supreme Court of Queensland. This person is usually the next of kin, but in the absence of a suitable person then the Public Trustee will act on behalf of the estate.

HOW DO YOU AVOID THESE RISKS?

Most of your life is spent working to build up assets. Having a valid and up-to-date Will is the only way to ensure that your life's work is passed on to the people you choose and not on a formula set down on the basis of family relationship. It provides security for those who are close to you and for those you are responsible for, and may avoid unnecessary difficulties upon your death.

A professionally drawn and executed Will greatly helps to reduce the time and cost involved in administering your estate and distributing your assets and can avoid delays and litigation often associated with seeking interpretation on poorly worded Wills.

Making a Will is a specialised task, often requiring consideration of complex financial, legal and tax issues to ensure that your estate is distributed in accordance with your wishes, in the most tax effective manner possible.

Further details with respect to Wills and Estate Planning may be obtained by contacting one of our Solicitors, who can offer practical legal advice and guidance.

Here at Briese Lawyers we offer you the opportunity to look at areas of your life that are most important to you and help you put in order Estate Plans that meet your specific needs and protect your wishes.

Liability limited by a scheme approved under professional standards legislation



BRIESE LAWYERS

303 Margaret St
(PO Box 1945)
TOOWOOMBA QLD 4350
Ph: 0746384833
Fax: 0746381833
Email: admin@brieselawyers.com.au
Website: www.brieselawyers.com.au