



Intestacy- no will, many questions

Dying without a will leaves more than an estate; it leaves many questions and issues to deal with. Without a will, there are no executors, no gifts to beneficiaries, and there are a number of legal matters which must be completed.

The primary issues that arise in the absence of a will, are:

- Application to Supreme Court is made for a grant of letters of administration (for the appointment of an administrator of the estate).
- Until an administrator is appointed, no one is legally responsible for the deceased's estate (under a will, the estate vests in the executor upon the deceased's death).
- Persons entitled to make application for a grant of administration are determined by the rules of the court. There is an order of priority of persons who may be granted administration by the court.
- The assets of the estate are distributed to beneficiaries in accordance with the *Succession Act 1981* (QLD), for example in the first instance, distribution to spouse and children in defined proportions.

An increasingly common difficulty that can arise for blended families is when the deceased leaves young children from a second marriage and adult children from the first marriage. Often, the deceased intended to make greater provision for the young children, but the intestacy laws determine equal proportions for all the children.

The message: an updated will removes these unwelcome complications at an often stressful time.

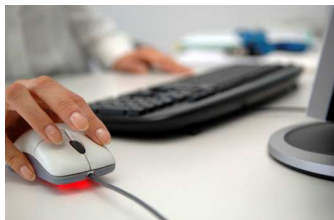
Case Study

Can an undated, unwitnessed and unsigned document be part of a valid will? This question was before the court in a recent Queensland case.

The testator had made a will in 2003. In November 2008, she wrote a document headed "My Will", which she did not sign, date nor had witnessed. She died on 11 December 2008. This purported codicil, admitted to the court for probate, gave a greater share to the testator's daughters, than was given to the husband under the will itself.

The court decided that the codicil was valid. Pursuant to s 18, *Succession Act 1981* (QLD), the court found that the testator intended the document to alter her will because of its heading, its dispositive nature and its reflecting the expressed intentions of the testator during the preceding months. *In the will and codicil of Cleland* [2009] QSC 189 (10 July 2009).

For assistance with all your Wills and Estate needs, email us at info@msslawyers.com.au or visit our website www.msslawyers.com.au. Alternatively, contact our professional team at our Gold Coast or Brisbane office.



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