



New Intestacy Laws

What does "intestacy" mean?

Intestacy occurs when a person dies leaving property, but has not made a Will, or leaves a Will, but some or all of his or her property is not effectively disposed of by that Will.

The new laws

The Succession Amendment (Intestacy) Act 2009 was assented to in parliament on 9 June 2009 but hasn't commenced yet.

The changes

One of the main changes between the existing laws and the new laws will be the distribution of the intestate estate where a person is survived by both a spouse and a de facto spouse.

Under the existing laws provision was only made for one spouse.

For example, if Tom was still married to Jane, but had been living with his new de facto spouse Mary for two or more years before his death, Mary would receive the "spouse's share" on intestacy, that is, the share of the estate which the laws provide ought to go to the spouse of the deceased.

However, if at any time during the last two years of his life Tom had lived with Jane, then Jane would automatically receive the "spouse's share", to the exclusion of Mary.

In either scenario, one spouse would be excluded and the only option for her to obtain a share in the estate would be to make an application to the Court for provision.

Under the new laws more than one spouse may be entitled on intestacy.

So, if Tom is survived by both Mary and Jane then both of them may be entitled to a share. Under section 125, those shares are to be calculated either:

- in accordance with a written agreement between Mary and Jane, or
- in accordance with an order of the Court, or
- in certain circumstances in equal shares.

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