

WHERE THERE'S A WILL ...

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How many of us have made any kind of preparations for the inevitable death? Specifically, what plans have been put in place for the loved ones and possessions we may leave behind? How many of us have actually made a will and knows what happens if we die without having made one?

A will is a written document which satisfies certain legal requirements of the Will Act and directs what property of the testator or deceased goes to specific persons or organizations. It comes into operation after the testator has died. It can be as simple or as complex as you may wish. If, however, you should die without making a will, or “intestate”, your property passes according to the provisions of the **Intestate’s Estate and Property Charges Act** (the Act) section 4 of which sets out a table of distribution of the intestate’s estate after the payment of funeral, administration expenses, and other proven debts and liabilities incurred before death. This table provides the sequence and proportions in which the intestate’s relatives may inherit. The following provides a brief overview of the table of distribution.

Surviving Spouse

First in line is the intestate’s surviving spouse, which includes the common law spouse, who takes briefly as follows:

1. All furniture and effects except those used by the intestate at the time of death exclusively or mainly for business purposes and money.
2. The greater of \$10,000.00 in cash or 10% of the net value of the estate free from death duties or costs.
3. 10% interest on the estate.
4. All of the “residuary estate” if there are no children. However, if there is one child the surviving spouse inherits 2/3 of the residuary estate, and if there is more than one child then the surviving spouse inherits 1/2 of the residuary estate. Where there are no children

but there are parent(s) of the intestate then 2/3 of the residuary estate is inherited by the surviving spouse.

Note, the “residuary estate” comprises all assets of the intestate be it land or personal estate, after the payment of the relevant debts, expenses and liabilities. In all it appears that the surviving spouse can possibly inherit the “lion’s share” of the estate.

Children

Next in line are children under 18 years old whose share is held on trust until they attain the age of 18 years. As mentioned above, if there is a surviving spouse the child or the children share only in a portion of the estate. However if there is no surviving spouse, the children are entitled to the entire residuary estate. Note that the Act does not permit children who were conceived, but not yet born before the death of the intestate, to have a claim after their birth.

Parents

Third in line are the parents of the intestate who become entitled to a share in the residuary estate only where there is no child or no children and then they share with the surviving spouse (1/3 share). Where there are no children and no surviving spouse do they take all the residuary estate. Curiously, the Act does not specify what happens to the intestate’s personal chattels where there is no surviving spouse.

Other Relatives

If the intestate leaves none of the above relatives, the following persons, described as “other eligible relatives” will inherit in the order set out below:

- (a) brothers and sisters of the whole blood, and if there are none then;
- (b) brother and sisters of the half-blood, and if there are none then;
- (c) grandparents of the intestate, but if there are none then;
- (d) uncles and aunts of the intestate, being siblings of the whole blood of the intestate’s parents, and if there are none then;
- (e) uncles and aunts of the intestate, being siblings of the half-blood of the intestate’s parents.

“Bona Vacantia”

Also important to note is the fact that where the intestate leaves no surviving spouse, children, parents or other eligible relatives, or if any of them defaults in taking an interest in the estate, then all the residuary estate goes to the government - that is “*bona vacantia*”.

The table is linear and the Act only recognizes the subsequent contingency if a higher category fails.

However, where there’s a will... you die testate and you determine the way in which your estate may be divided and the share each may take. The choice is ours.

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