

SUCCESSION Problem Solving Templates

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1 Intestacy

Rules of intestacy will apply where:

- There is no will;
- The will is invalid;
- The will is partially invalid.

An intestate is a person who dies without a will or without a valid will that effectively disposes of his/her estate: **Succession Act 2006 (NSW), Section 102.**

1.1 Survivorship Requirement

A person is not entitled to participate in the distribution of an intestate estate unless the person survives the intestate: **SA, Section 108.** A person will not be regarded as having survived an intestate unless he/she survives the intestate for at least 30 days: **SA, Section 107.**

1.2 Spouses

A spouse of an intestate is a person who was married to the intestate immediately before the intestate's death, or who was in a domestic partnership with the intestate immediately before death: **SA, Section 104.**

A domestic partnership refers to a registered relationship or de facto relationship that has either been in existence for a continuous period of 2 years, or has resulted in the birth of a child: **SA, Section 105.**

If an intestate leaves a spouse but no issue, the spouse is entitled to the whole of the estate: **SA, Section 111.**

If an intestate leaves a spouse and issue, and the issue are all issue of the spouse, the spouse is entitled to the whole of the estate: **SA, Section 112.**

If an intestate leaves a spouse and any issue who are not issue of the spouse, the spouse is entitled to:

- (a) the intestate's personal effects, and
- (b) a statutory legacy, and
- (c) one-half of the remainder (if any) of the intestate estate: **SA, Section 113.**

If an intestate leaves more than one spouse, but no issue, the spouses are entitled to the whole of the intestate estate in shares: **SA, Section 122.**

If an intestate leaves more than one spouse and issue who are all issue of one or more of the surviving spouses, the spouses are entitled to the whole of the estate in shares: **SA, Section 123.**

If an intestate leaves more than one spouse and any issue who are not issue of the surviving spouse:

- (a) the spouses are entitled to share the intestate's personal effects; and
- (b) each spouse is entitled to share the statutory legacy that would be payable if the intestate had left only one spouse; and
- (c) the spouses are entitled to share one-half of the remainder (if any) of the intestate estate: **SA, Section 124.**

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Spouses are to share the estate in accordance with a written agreement (**SA, Section 125(1)(a)**), or in accordance with a distribution order from the court (**SA, Section 125(1)(b)**), or if the conditions in **SA, Section 125(2)** are satisfied, the spouses are to share the estate in equal shares.

1.3 Children

If an intestate leaves no spouse, but leaves issue, the intestate's children are entitled to the whole of the estate: **SA, Section 127(1)**.

If the intestate leaves a spouse or spouses and issue who are not also issue of a surviving spouse, and part of the estate remains after satisfying the spouse's entitlement(s), the intestate's children are entitled to the remaining part of the intestate's estate: **SA, Section 127(2)**.

If no child predeceased the intestate leaving issue who survived the intestate, then:

- (a) If there is only one surviving child – the entitlement vests in the child; or
- (b) If there are two or more surviving children – the entitlement vests in them in equal shares: **SA, Section 127(3)**.

1.4 Parents

The parents of the intestate are entitled to the whole of the intestate estate if the intestate leaves no spouse and no issue: **SA, Section 128(1)**.

If both parents survive the intestate, the entitlement vests in them in equal shares: **SA, Section 128(2)**.

1.5 Brothers and Sisters

The brothers and sisters of the intestate are entitled to the whole of the intestate estate if the intestate leaves no spouse, issue, or parents: **SA, Section 129(1)**.

If more than one brother and/or sister survives the intestate, the entitlement will vest in them in equal shares: **SA, Section 128(2)**.

1.6 Grandparents

The grandparents of the intestate are entitled to the whole of the intestate estate if the intestate leaves no spouse, issue, parents, brothers or sisters, or issue of a deceased brother or sister: **SA, Section 130(1)**.

If both grandparents survive the intestate, the entitlement will vest in them in equal shares: **SA, Section 130(2)**.