

Succession Amendment (Intestacy) Act 2009

SUMMARY OF AMENDMENTS IN EFFECT AS OF MARCH 1, 2010

The Succession Amendment (Intestacy) Bill 2009 attempts to simplify the asset distribution process when a person dies without a Will. The measures included are also designed to reflect the changing community trends and attitudes to Will drafting. The changes make it clearer who is to inherit when someone dies without a Will. In particular, the following summary pays specific attention to the simple to understand new rules when there is only one surviving 'spouse', and the more complicated rules determining who inherits when there is more than one surviving 'spouse' or domestic partnership and no Will in place.

However, the following changes do not in fact make it less important to ensure that your clients have a decent Will. In fact, they draw into focus more clearly the real need for Modern Estate Planning, as the law is now more cut and dried as to who benefits, which ultimately can leave surviving family members feeling hard done by, as the 'understood' wishes of the deceased may not be met.

** Please note that the definition of spouse has been expanded by the new rules to include a person who was in a domestic partnership with the deceased at the time of the deceased's death. A domestic partner is defined as: A relationship other than marriage between the intestate and another person that is a de facto relationship and that has been in existence for a continuous period of at least two years or has resulted in a child.*

INTESTACY - ONE SPOUSE

PREVIOUSLY, where an intestate dies leaving children and a spouse or domestic partner, the spouse or domestic partner is entitled to a statutory legacy (\$200,000), the deceased's personal effects, and half the residue of the estate. The interstate's child or children are entitled to the remainder unless it is required to secure an interest in the shared home for the spouse or partner.

THE NEW AMENDMENTS provide that where an intestate dies leaving children and a spouse or domestic partner, the spouse or domestic partner is **now entitled to the entire estate**. It is assumed that the interstate's children will inherit from the spouse or partner down the line.

The amendments provides for different arrangements where the intestate dies leaving a spouse or domestic partner and children from another relationship. This recognizes the fact that such children may not stand to inherit from the intestate's spouse or domestic partner. The spouse or domestic partner is entitled to a statutory legacy (increased to \$350,000), the deceased's personal effects, and half the residue of the estate. The intestate's children will share in what remains.

Also, the rights of the spouse or domestic partner where the intestate dies leaving children from another relationship have changed in that they are not automatically entitled to the house at the expense of the intestate's children. Instead, the surviving spouse or domestic partner will have the special right to elect to take any part of the estate in satisfaction of their entitlement outlined above. If the selected part is worth more than their entitlement the surviving spouse or domestic partner will be required to make up the difference from their own resources.

As mentioned above, the statutory legacy entitlement for a spouse or domestic partner has been increased from \$200,000 to \$350,000.

	OLD RULES	NEW RULES
SPOUSE	Household chattels + The Statutory legacy (the first \$200,000 of the estate) + A half share in the balance of the intestate estate	Entire intestate estate
CHILDREN	A half share in the balance of the intestate estate	Nothing

INTESTACY - MORE THAN ONE SPOUSE or DOMESTIC PARTNER

As noted above, the wider definition of 'spouse' makes it possible for the deceased to have multiple spouses at the time of his or her death. The table below summarises the rules relating to the prioritising of multiple spouses where there are children of the current/prior relationships.

* *Prior relationships* refers to any relationship outside of the current spouse(s) or domestic partner(s) whereby the other parent from prior relationship is also deceased.

	Multiple Spouses with no surviving children	Multiple spouses with surviving children from <i>current</i> relationships	Multiple spouses, with surviving children from <i>prior</i> relationships	Multiple spouses with surviving children from <i>current</i> and <i>prior</i> relationship
Spouses	The entire intestate estate is divided between the spouses	The entire intestate estate is divided between the spouses	Personal effects Equal Share of the Statutory Legacy (\$350,000) A half share in the balance of the intestate estate are divided between the spouses	Personal effects Equal Share of the Statutory Legacy (\$350,000) A half share in the balance of the intestate estate are divided between the spouses
Children	N/A	Nothing	A half share in the balance of the estate	A half share in the balance of the intestate estate is divided between all the deceased's children