

Dying Without a Will

The Distribution of Your Estate...

Surviving Spouse and No Children

- If there is a surviving spouse (i.e.: not common-law), whether or not the spouses are separated (but not divorced), and there are no children surviving, the spouse may be entitled to the entire Estate. A spouse, for Estate purposes, is limited only to a legally married spouse. Common-law spouses are not entitled to the distribution of the deceased person's Estate.

Surviving Spouse and Surviving Children

- When there are both a spouse (i.e.: not common-law), whether or not the spouses are separated (but not divorced), and children surviving, the spouse may be entitled to a "preferential share". The preferential share is currently \$200,000.00, fixed by regulation under the SLRA.

The spouse is entitled to the preferential share in the following manner:

Estate worth LESS than \$200,000 (net value):

- The entire Estate passes to the spouse regardless of whether or not there are surviving children.

Estate worth MORE than \$200,000 (net value):

- The first \$200,000.00 passes to the spouse, and anything over and above the \$200,00.00 will be divided between the spouse and children in the following way:
 - if there is only one (1) child, then the spouse is entitled to 50% of the excess over and above \$200,000.00 and the remaining 50% is for the one (1) child; or
 - if there is more than one child, then the spouse is entitled to 33.33% of the excess over and above \$200,000.00, and the balance, being the 66.67% of the excess, is split equally between the remaining children.

Alternatively, a surviving (legally married) spouse, whether separated or not, is given the option to either elect to receive a portion of the deceased spouse's Estate under Part II of the SLRA, as noted above, **OR** under section 5(2) of the *Family Law Act* (FLA).

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Electing Under Section 5(2) of the FLA

- When a spouse dies, if the Net Family Property (NFP) of the deceased spouse exceeds the NFP of the surviving spouse, the surviving spouse is entitled to 50% of the difference between them. If the surviving spouse elects to receive under the FLA, he or she forfeits their entitlement under the SLRA. This option is not available to common-law spouses.

No Spouse and No Children but Surviving Parents

- If there is no surviving spouse and no surviving children and the parent(s) of the deceased is/are surviving, then the parent(s) will receive the entire Estate.

No Spouse, No Children and No Parents

- If there is no spouse, no children, or no parent(s) surviving, the Estate will pass equally among the siblings of the deceased person.

No Immediate Family – to Nephews and Nieces

- Where there is no spouse, no children, no parent(s), or no siblings surviving, the Estate passes to all of the nephews and nieces, who will share the Estate equally.

Next-of-Kin

- If none of the above is surviving, the next-of-kin of equal degree will share equally.

No Next-of-Kin

- Finally, if there is no next-of-kin, the Estate will ultimately become the property of the government.