

What happens when a de facto partner dies without a Will?

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If someone dies without a Will, a fixed formula set by Parliament determines who receives the deceased's assets and in what proportions.

A person will be recognised as being a "domestic partner" of the deceased if the two people were in a de facto relationship which:

- (a) was continuous for 2 or more years or
- (b) resulted in the birth of a child.

A de facto spouse may be of the same or opposite sex to the deceased.

There are a range of factors to be taken into account to determine whether a de facto relationship exists.

If the de facto spouse survives the deceased by at least 30 days and the deceased had no children, then the de facto spouse will be entitled to inherit the whole of the deceased's estate under the formula set by Parliament.

Where the deceased spouse had children from a previous relationship, the formula can get quite complicated.

The de facto spouse may also have the right to acquire any of the property that belonged to the deceased, including real estate, car, boat or shares. The purchase price paid for the property will be taken out of the de facto spouse's entitlement to the deceased estate and any shortfall must be paid out of the de facto spouse's personal resources.

The Court has the power to change the way a person's assets are distributed in certain circumstances – even if the person has died without a Will.

If you don't have a Will, we recommend you contact a lawyer in our Estate Planning team. It is advisable to have a Will in place to ensure (as far as you are able) that your assets are distributed in accordance with your wishes. A Will may also help to minimise a potential dispute in the division of your estate upon your death. If you would like a new Will or to update an old Will, contact Matthews Folbigg Lawyers in Parramatta. We can provide you with practical estate planning legal advice.

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or ring us on 9635 7966 for more information.