What happens to your things when you die?

Read on for answers

Coastal Law Group

WELCOME

Hi there!

As the saying goes, the only certainties in life are death and taxes.

Whilst this saying still rings true, most people have figured out how to handle their taxes but the majority of Australians remain blissfully unaware of what actually happens to their things when they die.

We're here to change that.

This guide explains what happens to your things when you die and how you can make sure you have a say in who gets what.

Estate planning can feel overwhelming. If you have questions, we're here to help.

Coastal Law Group

Disclaimer: This guide is not legal advice and is not to be relied on as legal advice. This guide contains information of a general nature only. Ensure you obtain appropriate legal and taxation advice prior to implementing an estate plan.

Yes, we're a law firm—but not the kind you might expect.

At Coastal Law Group, we've created a welcoming space where people feel comfortable asking questions and planning for the future. We believe estate planning shouldn't be intimidating or overwhelming. It should be clear, personal, and tailored to your unique circumstances.

Everyone deserves quality legal advice and the peace of mind that comes with a professionally prepared estate plan. Our team is here to help you put the right plan in place.

TOPIC ONE: WHO GETS MY THINGS?

This topic explores who inherits your 'things' when you die. (Spoiler alert: it's typically up to you, if you make a plan!)

01 When you die, everything you own personally forms your estate. Your estate **does not** include any property you owned jointly (as joint tenants) with others, including bank accounts and real property (i.e. houses). Ownership of these assets automatically passes to the surviving joint owner under the 'rule of survivorship'.

02 If you have a valid Will, it should name an executor (or executors). Your executor is the person you have chosen to manage your estate. Your executor must first pay your debts and other obligations from your estate. The balance of your estate is then distributed in accordance with the terms of your Will.

03 If you die without having a valid Will, you are said to have died 'intestate'. This means that someone (typically a family member) will need to apply to the Supreme Court for Letters of Administration. This can be a costly and stressful process, especially when your loved ones are grieving.

04 Once the Court grants Letters of Administration, the person appointed as your administrator has the authority to deal with your estate. As there is no Will for your administrator to follow, the law dictates who will receive your estate. Check out the diagram on the next page to see how the law thinks your estate should be distributed.

05 Your Will allows you to specify what you want to happen to your body, such as burial or cremation. Failing to specify your wishes in your Will can create disagreements between your loved ones. You don't have to include your burial or funeral wishes in your Will. If you don't, make sure your loved ones know what you want.

06 You can include the giving of specific gifts in your Will, which is essential if you wish to gift specific items (such as jewellery, artwork or family heirlooms) to specific individuals. If you do not provide for specific gifts in your Will, you cannot ensure that items of value to you (whether they have financial or sentimental value) are passed down to those of your choosing. Without specific gifts, treasured family heirlooms may form part of your estate. They can then be sold or given to someone who doesn't appreciate their significance.

07 Not all Wills are created equal. Whilst many individuals opt for a 'simple' or 'traditional' Will, there can be significant benefits in having a Will with testamentary trusts prepared. Think of a testamentary trust as a protective structure that holds assets for your beneficiaries after you die. Importantly, testamentary trusts can only be created through your Will. That means you only have one opportunity to include one!

08 Having a Will prepared does not have to be complex and time-consuming (at least not when we prepare them!). Taking the time to have your Will prepared today can save your loved ones considerable expense and uncertainty in the future. Let us help you, help them.

WHO INHERITS IF YOU DIE WITHOUT A WILL(IN QUEENSLAND)?

As determined by the Succession Act 1981 (Qld)

Is the deceased survived by a spouse or de facto partner?

YES

Is the deceased survived by children (including adopted children)?

NO

The spouse/de facto partner receives the **entire estate** of the deceased

YES

The spouse/de facto partner receives:

- Personal belongings
- Statutory legacy (currently $150,000 but subject to legislative change)
- A share of the residue of the deceased's estate

The child/ren receive:

- A share of the residue of the deceased's estate (shared equally where there is more than one child)

NO

The deceased's estate is distributed according to the statutory order of relatives (see below)

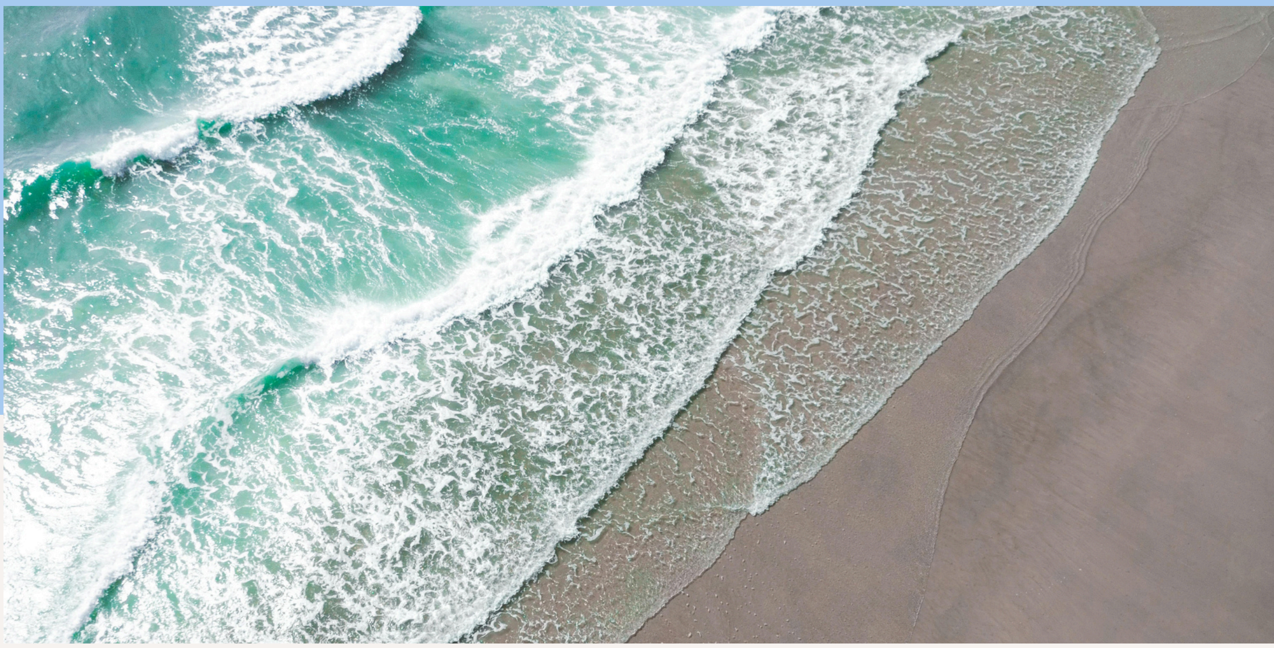
Statutory Order of Relatives

(where the deceased does not leave a surviving spouse/de facto partner)

1. Children (share equally)
2. Parents (share equally)
3. Brothers and sisters or their issue (share equally)
4. Grandparents (share equally)
5. Aunts and uncles or their issue (share equally)
6. The State of Queensland (bona vacantia)

TOPIC TWO:
I HAVE A BLENDED FAMILY, HELP?!

This topic explores the challenges that exist in making an estate plan when you are part of a blended family and some ideas on how to manage these challenges.



01 One of the most difficult aspects of making an estate plan when you have a blended family is balancing your wishes, with what the law requires of you.

02 In Queensland, an eligible person may be entitled to challenge your Will. These people include your spouse (including a de facto partner), your children (including adopted children and stepchildren), and certain dependants if they are financially supported by you at the time of your death.

03 If your Will does not make adequate provision for an eligible person, they may be entitled to bring a family provision application against your estate. If the application succeeds, the Court can change the way your estate is distributed (so your chosen beneficiaries may receive less of your estate than you intended!).

04 Whilst many individuals are more than happy to share their estate equally between their biological and stepchildren, they are often concerned with what happens if they die before their spouse and leave all (or most) of their estate to their spouse.

05 There is no guarantee that their surviving spouse will leave their estate equally between their biological children and their stepchildren (being your biological children).

06 There are steps that you can take now, to ensure that your biological children are provided for once both you and your spouse have died.

07 <u>Option 1: Enter into a Deed to Make Mutual Wills</u>
You and your spouse can enter into a contract called a 'Deed to Make Mutual Wills'. This document records how each of you agrees to make your Will. This can help ensure your combined estate ultimately passes to all of your intended beneficiaries, which you can agree on together.

08 <u>Option 2: Take advantage of testamentary trusts in your Will</u>
Under your Will, you can gift your estate to testamentary trusts, instead of gifting your assets to your spouse personally. This allows you to nominate controllers of the testamentary trusts, so that your spouse can benefit from the testamentary trust during her lifetime, with a built-in mechanism for the control and benefit of the testamentary trusts to flow to your children upon your spouse's death (or incapacity).

09 <u>Option 3: Direct the payment of your superannuation benefits to your children</u>
Whilst often not ideal for taxation reasons, you may make a binding death benefit nomination naming your child/ren as the beneficiary of your superannuation benefits. As superannuation benefits do not form part of your estate, they are safe from being exposed to a family provision application.

10 <u>Option 4: Jointly hold property with your children</u>
Not an option to be taken lightly, but an option nonetheless! If you own property (such as bank accounts or residential or commercial property as **joint tenants** with your child/ren, then upon your death, ownership will transfer to your child/ren under the 'rule of survivorship'. This prevents such property from forming part of your estate and being exposed to a family provision application.

11 Option 5: Make gifts to your children during your lifetime
Want to make sure your children receive particular assets? You can gift those particular assets during your lifetime. Before doing so, make sure you understand the legal and tax consequences.

12 BEFORE IMPLEMENTING ANY OF THE ABOVE OPTIONS, ensure you obtain appropriate legal and taxation advice. Otherwise your actions may have unintended consequences.

TOPIC THREE: WHAT ABOUT MY TRUST

This topic explains why trusts require special consideration when making an estate plan.

01 When you die, your estate relates only to your **personal** assets. Any assets held within a trust are, intentionally, **not** your personal assets.

02 As trust assets are not your personal assets, you need to make sure that your estate plan includes a succession plan for your trust.

03 The succession plan for your trust is governed by your trust's deed (being the document that contains the 'rules' for the trust), which will specify who the controllers of the trust are and what happens when they die or lose capacity.

04 Best practice, provided that the trust deed permits it, is having a deed prepared that nominates individual/s to take over control of the trust upon your death. The important roles to fill are known as the trustee and the appointor (or principal).

05 Did you know, estate planning isn't just about death? It's also about protecting yourself, and your trusts, if you lose capacity. Appropriate powers of attorney help ensure someone can continue managing your trusts if you aren't able to.

TOPIC FOUR:
WHAT ABOUT MY SUPER?

This topic explores an often overlooked element of an estate plan - your super!

01 Many people assume that their superannuation benefits automatically form part of their estate when they die. This assumption, however, is not correct. Your superannuation benefits **do not** automatically form part of your estate upon your death.

02 You can generally direct the trustee of your superannuation fund how you want your superannuation benefits paid upon your death by putting a binding death benefit nomination in place.

03 A binding death benefit nomination lets you tell your superannuation fund who should receive your superannuation benefits when you die, provided they are an eligible beneficiary. An eligible beneficiary can be your spouse, your child/ren, a financial dependent, or your legal personal representative (being your executor or administrator).

04 It is imperative that you obtain appropriate legal and taxation advice before putting a binding death benefit nomination in place, as the tax treatment varies depending on the beneficiary you nominate.

HAVE QUESTIONS?

Get in touch with us, we'd love to help!

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