

CASE IN POINT

Sales Tax Estate Planning Underwriting & Product Newsletter

Where There is No Will- What is the Way?



Intestacy and Changes to the Spousal Entitlement in Ontario

In 2021, the Ontario government has made a number of amendments to the current estate laws. The impact of some of these amendments will affect legally married (not common law) spouses. Let's consider a change that impacts what happens when a married person dies without a Will.

There are a number of myths regarding what happens when a person dies "intestate", which in legal terms, means to die without a Will. A common one is that the government gets everything the deceased owned.

However, in Ontario, The Succession Law Reform Act (SLRA), provides direction regarding the outcome of dying intestate.

Dying Intestate With a Spouse and Children

If a person is married with children and has no Will at death, the SLRA directs that the surviving spouse is entitled to what is called "a preferential share" of the value of the estate, and an additional amount, depending on the number of surviving children, grandchildren, and/or other lineal descendants (referred to as "issue") there are. As of March 1, 2021, the preferential share has been increased from \$200,000.00 to \$350,000.00.



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Akua is a lawyer and subject matter expert in tax and estate planning. Her estate planning expertise includes, tax and probate planning, corporate reorganizations, cross-border will and trust planning, charitable giving, planning for special needs beneficiaries, estate planning for pets, and incapacity planning. Akua's experience includes working with owner-managers, entrepreneurs, professionals, seniors and parents of young families. Akua has also previously provided tax and estate planning advice and opinions to advisors from various financial institutions and their clients.

Akua is a frequent speaker and presenter on estate and trust issues and has written published articles as an estate law contributor to Advisors Edge Report as well as other publications. She is also an estate law tutor with the Law Society of Ontario. Akua has appeared on local television to discuss wills and estates, estate planning for the business owner, and powers of attorney. Additionally, she is the author My Lifeprint, an estate planning manual and workbook.

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To see how the preferential share is calculated, let's consider the following scenario:

Sophie and Maxwell have been married for 20 years. On March 1, 2021, Maxwell unexpectedly contracts a life-threatening disease and sadly, passes away a few days later. He leaves behind Sophie and their two children- Ricky & Roxie. Maxwell died intestate. The net value of his estate is \$1,000,000.00.

Pursuant to the SLRA, Sophie, the surviving spouse, is entitled to receive \$350,000.00 as the preferential share. She would also be entitled to an additional 1/3 share of the estate, or approximately \$216,667.00, for a total of \$567,017.00. Ricky and Roxie would be entitled to equally share the remaining 2/3 of the estate (approximately \$216,666.00 to each child). If Maxwell had additional surviving children at the time of his death, they would share the remaining 2/3 of the estate equally with Ricky and Roxy.

Dying Intestate With a Spouse and Child or Pre-deceased Child leaving Issue

What if Sophie and Maxwell had only one child- Ricky, at the time of Maxwell's death? Pursuant to the SLRA, Sophie would be entitled to the preferential share of \$350,000.00 and one-half of the value of estate, or approximately \$325,000.00, for a total of \$675,000.00. Ricky would be entitled to the remaining one-half of the value of estate, or approximately \$325,000.00.

Additionally, the SLRA provides that if a child predeceases an intestate parent, and leaves issue, the deceased child's estate share will pass to such issue. Let's consider the following scenario:

Sophie and Maxwell have been married for 20 years. On March 1, 2021, Maxwell unexpectedly contracts

a life-threatening disease and sadly, passes away a few days later. He leaves behind Sophie and their two grandchildren- Ronald & Randie, who are the children of their son Ricky. Ricky passed away in a motor vehicle accident five years ago. The net value of Maxwell's estate is \$1,000,000.00.

Pursuant to the SLRA, Sophie will be entitled to receive the preferential share of \$350,000.00. She will also be entitled to receive one-half of the value of the estate, or approximately \$325,000.00. Ronald and Randie are each entitled to an equal share of the remaining one-half of the value of the estate, or approximately \$162,500.00 each.

Dying Intestate with a Spouse and no Issue

If Maxwell passed away intestate leaving behind only Sophie as his surviving spouse and no surviving children, grandchildren or other lineal descendants, Sophie would be entitled to receive his entire estate, valued in our scenario at \$1,000,000.00.

A few additional points to be aware of regarding the spousal preferential share:

- It is calculated after the deduction of the debts and liabilities of the deceased.
- Where the net value of the deceased's estate is lower than the preferential share (\$350,000.00 as of March 1, 2021), the surviving spouse is entitled to receive the entire estate, to the exclusion of any surviving issue.
- If the deceased left a Will that did not dispose of all of his/her assets (known as a partial intestacy), calculation of the preferential share would take into account any entitlement received by the surviving spouse under the Will.

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