

ACT & NSW

What happens if you die without a valid will?



What is intestacy?

Intestacy is the term used to describe the circumstances in which a person dies without leaving a valid Will. It will usually arise in one of two scenarios.

Firstly, where a person dies without making a Will or having made a Will, it cannot be found; and secondly, where a person makes a Will, but it is later found to be invalid.

There are a number of bases upon which a Will might be held to be invalid, including:

- where there has been a failure to comply with the formal requirements of relevant legislation;
- where the will maker did not have the requisite cognitive capacity to make the Will; or
- where the circumstances in which it was made are such that the Court sets the Will aside.

However, by far the most common cause of intestacy is the failure to make a Will in the first place.





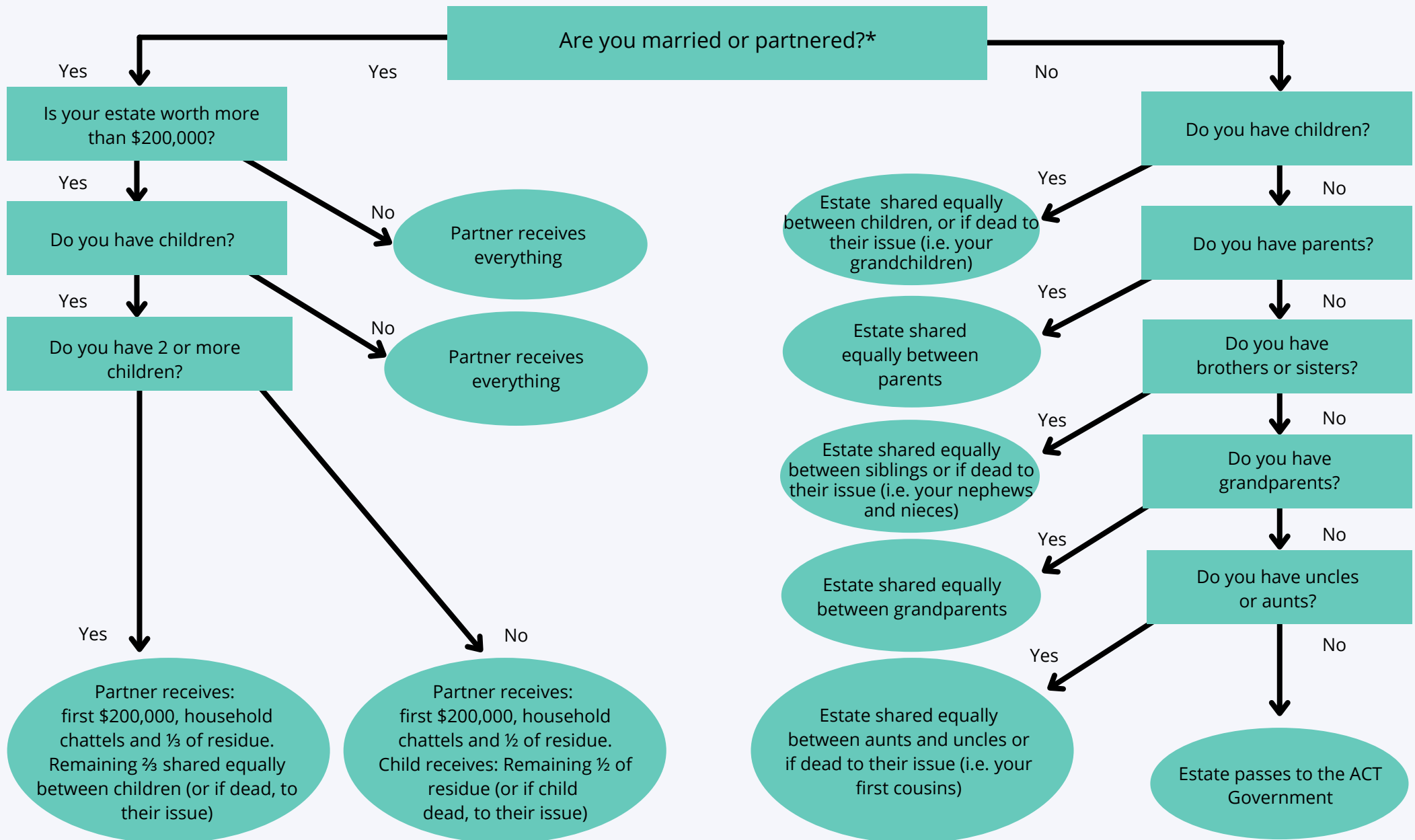
What are the consequences?

It is surprising the number of people who either do not know or who have a complete misunderstanding of the consequences of dying without a valid Will. The most common misunderstanding is that it is not necessary to have a Will, because “everything will end up with my wife/husband anyway”.

Unfortunately, the situation is not as simple as this and the position is different depending on where you are living at the time of your death.

While the outcomes vary between each State and Territory, below are two diagrams that explain how your estate will be distributed if you die without a valid Will in the ACT or New South Wales.

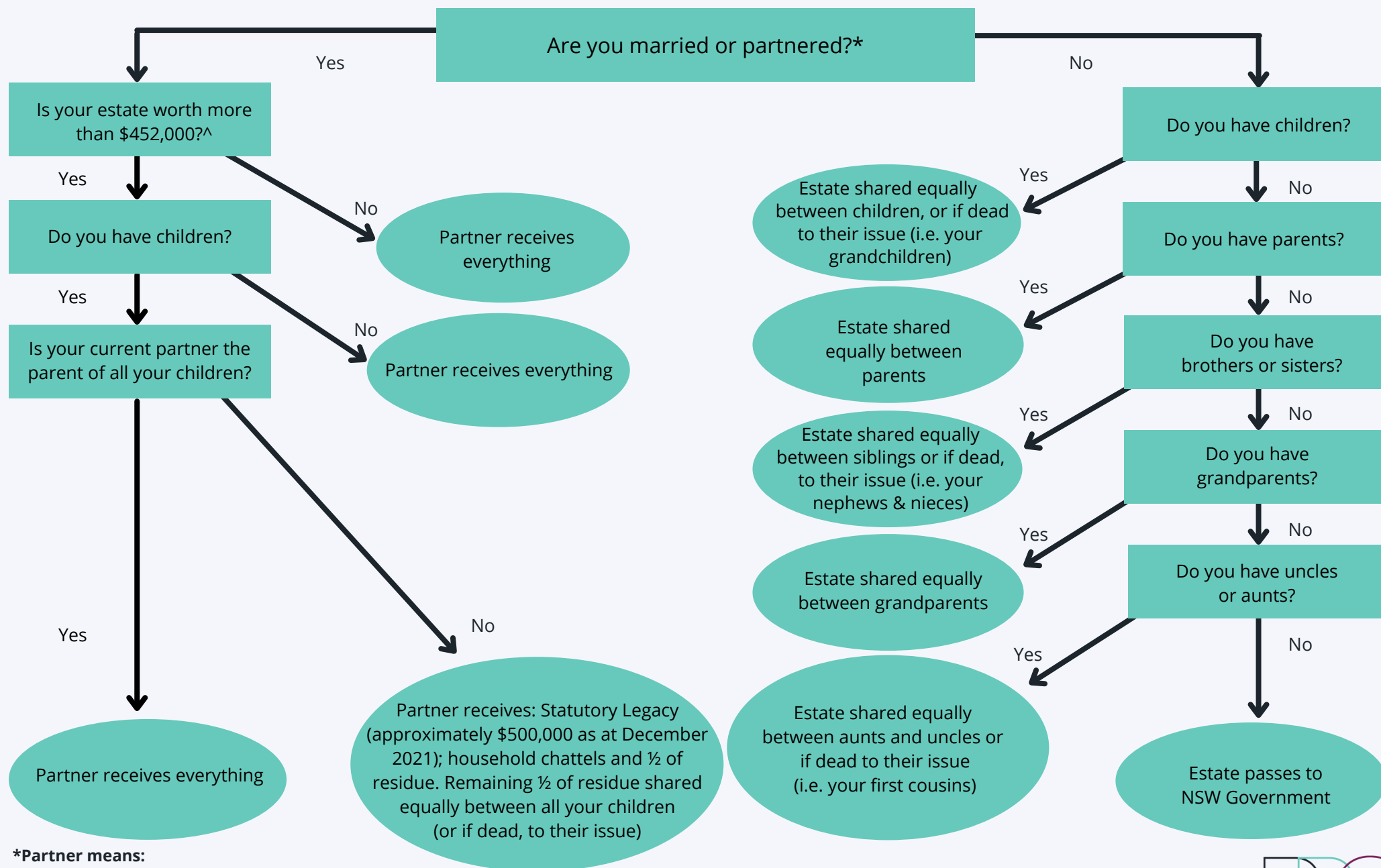
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*Partner means:

- Your husband/wife/civil partner; or
- Your domestic partner if: (a) they have been your partner continuously for 2 or more years or (b) is the parent of your child.

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^ Spouse's Statutory Legacy is indexed by CPI. \$499,118 is approximate amount as at September 2021. By the end of 2021 it will be approximately \$500,000.

A message from Phil Davey

One of the more challenging parts of our role as wills and estates lawyers is where we have to deal with cases where there is no Will and where one of the consequences is significant financial distress for the surviving partner. Perhaps even more challenging are cases where the Will is found to be invalid, particularly in circumstances where, with the benefit of the right advice at the time the Will was made, the problem could have been avoided. The reality is that whilst almost anyone can write a Will, having a valid Will which will stand the test of time requires appropriate legal advice.

My team specialise in identifying and managing the risks facing our clients in their estate planning. Our clients can be assured that their Will complies with all of the formal requirements for a valid Will. In cases where there may be issues in relation to the cognitive capacity of the Will maker, we have processes and procedures to protect the Will against later challenges. We work closely with other professional advisers, including accountants, financial planners and medical experts, as required, to ensure that our mutual clients' objectives are met and that their interests are protected.

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