



## THE LEGAL MEMO

### *DYING WITHOUT A WILL*

- When you die without a will it is referred to as “dying intestate”. If you die intestate the *Ontario Succession Law Reform Act* provides the mandatory scheme to distribute your assets.

The scheme is as follows:

**1.) If you have a spouse, but no children:**

Your spouse inherits everything. This only applies to legally married spouses. Common-law spouses do not automatically receive anything if you die without a Will.

**2.) If you have a spouse and children:**

Your spouse first takes a *preferential share* up-to \$200,00.00 worth of assets. Anything left over is called the *residue*. Such residue is divided between your spouse and your children as follows: If there is only one child, your spouse and child each receive half of the residue of the estate; if there is more than one child, your spouse receives one-third of the residue and the children share the remainder equally.

**3.) If you have children, but no spouse:**

The children inherit your entire estate.

**4.) If you have no spouse and no children:**

Your parents inherit your entire estate.

**5.) If you have no spouse, no children, and no parents:**

Your brothers and sisters divide your estate.

**6.) If you also have no brothers and sisters:**

Your nieces and nephews each inherit an equal portion of your estate.



**7.) If you have no nieces and no nephews:**

All other next of kin inherit an equal portion of your estate.

**8.) If you have no living next of kin:**

Your estate goes to the Ontario government.

This may not be how to wanted your estate divided.

- Additionally your beneficiaries will need to go to court to have an executor appointed in order to legally deal with and transfer the assets. They will need to obtain a “Certificate of Appointment of an Estate Trustee Without a Will” and there will be a time delay that may be a burden for the beneficiaries.
- Common-Law Spouse

A common-law spouse has, at this time, no right to any distribution under an intestate estate. They may be a joint owner of property and entitled to a right of survivorship and/or they may be a “named beneficiary” under an RRSP, TFSA, etc., but those rights do not flow from the intestate estate. Those rights are outside the will.

***Remember that every situation is different and this article deals only with generalities. If you are uncertain as to your rights in a certain situation you should consult your lawyer.***