

Death of a Partner

What are my rights if my partner dies?

When there is a will

When there is a will, the estate will normally be distributed as the will provides.

If you have been cut out of the will, or received a share that you think is too little, and you were still living with your partner on the date of his/her death, you may claim for a share or increased share of the estate. This claim will depend on your circumstances and you should see a lawyer as soon as possible to assess how strong your claim is. The claim needs to be made within six months of probate being granted.

When there is no will

When there is no will, but you were living together on the date of death, you will be entitled to inherit some or all of the estate. What you get depends on who else is entitled to a share.

- If the deceased person left no husband, wife or children, the domestic partner is entitled to the whole estate.
- If there are no children but there is both a husband or wife and a domestic partner, the two of them share the estate.
- If there is no husband or wife, but the deceased person had children, the domestic partner is entitled to the first \$10 000 and half of the rest of the estate. The children get the other half, which is shared equally among them.

Who distributes my partner's estate?

If there is a will, it normally appoints an executor. It is that person's job to collect the assets and distribute them as the will directs.

If there is no will, then the court generally appoints the closest relative to do this job. As a domestic partner, you are the closest relative for this purpose.

Does this mean we don't need to make wills?

Even though you can still inherit without a will, it is best if you each make a will setting out exactly what you want done with your property. You can also appoint your partner to be your executor, ensuring that he or she takes control of your property from the time of your death.

How do I make a will?

A lawyer, the Public Trustee or a private trustee company can make a will for you. Make sure you understand the charges and whether they will receive a commission from your estate. It is possible to make your own will but there are risks in doing so, especially if your affairs are complicated.

What if my partner is killed in an accident?

If the accident was caused by someone's negligence, for example, if your partner was run down by a drunk driver, you may be entitled to compensation. If you were financially independent, the amount may be just a token sum for grief.

If you were financially dependent on your partner, or if the two of you were in business together, you can also claim for the financial loss that results from the death.

The same is true if your partner is killed by homicide.

What about superannuation?

This will depend on the rules of the superannuation fund. Contact the fund to for more information.

Further information

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