

Genealogy at NSW Trustee & Guardian



What we do

If a person dies without leaving a valid Will, they are said to die intestate. When this happens, NSW Trustee & Guardian can be appointed to administer their estate.

As the largest administrator of estates in NSW, individuals and legal practitioners often refer intestate estates to us.

Part of our responsibility is to confirm relatives that are entitled to a share of a person's estate.

Sometimes this can be a simple process, but when there are complications, or when overseas research is required, estates are referred to our Genealogy Unit.

Our Genealogy Unit will carry out a research investigation to identify, locate and prove relatives that are entitled to an estate before it can be distributed. This is required by law.

We may also carry out research when a person has died with a Will but a beneficiary cannot be found.

Key terms used in this guide

Beneficiary

People and organisations that will receive or benefit from an estate's assets.

Establish entitlements

Identifying who is lawfully entitled to a share in an estate.

Genealogy

The study of tracing a person's family tree.

Grant of Letters of Administration

The application to the Supreme Court that allows NSW Trustee & Guardian to administer an intestate estate.

Issue

A person's children, grandchildren or great grandchildren.

Intestate

Not having a valid Will when you die.

Next of kin

A person's closest living relatives.

Next of kin enquiry

Name of the court application we sometimes make to obtain an order to distribute an estate.

Spouse

A married person or domestic partner.

Search certificate

Proof that a registry has searched for a particular event such as a birth or death within a certain time period.



**NSW Trustee
& Guardian**

How an estate is shared if there is no Will

NSW law sets out how an estate will be shared amongst relatives if a person dies and doesn't leave a Will. The research we carry out must follow those laws.

Relatives are grouped into categories and must follow a set order. If there are no relatives entitled to an estate, as a last resort, it becomes the property of the NSW Government. More information can be found in the *Succession Act 2006*.

Order of relatives entitled to an estate:

- 1 spouse(s)**
This is regardless of whether they have children with the deceased.
- 2 spouse(s) and other children**
If the deceased has children with a previous spouse, the estate is divided to a set formula set out in the Succession Act.
- 3 children, grandchildren, great grandchildren etc.**
(these people are referred to as 'issue')
This does not include step or foster children.
- 4 parents**
- 5 siblings**
This includes half-siblings and adopted siblings. The children, grandchildren etc. of any predeceased sibling will receive their share.
- 6 grandparents**
- 7 aunts and uncles**
- 8 first cousins**



How we carry out research

To establish who is rightfully entitled to an estate, we must carry out research to identify members of each 'category' of relative and their living status. If there are no surviving relatives in a category, research moves to the next category.

Evidence we need

Tracing the movements of people from one place to another during their lifetime plays a key part.

Some of the evidence we must gather includes:

- birth, marriage and death certificates
- divorce records
- search certificates to verify children of the deceased, their parents, siblings, grandparents, aunts and uncles.

We must also search birth, marriage, death and divorce events in every state and country the deceased and each relative lived.

Research takes time

By its nature, research involves long timeframes and often spans many years. Our researchers have specialist skills and deal with a high volume of complex matters at any one time.

In Australia, we work with births, deaths and marriages registries in each state. However, overseas research can be far more complicated.

Overseas challenges include:

- dealing with jurisdictions, laws, record keeping systems and languages of different countries
- extensive delays from overseas organisations responding to our enquiries
- researching as far back as the mid-19th century depending upon the life span of relatives
- inconsistencies in evidence that need to be resolved. For example, sometimes records show different names, dates, or places of birth to what has been recorded elsewhere. Sometimes there is no father recorded on the birth certificate.

Why we gather evidence

We need to gather evidence and locate all people entitled to an estate to ensure that it is distributed correctly.

If this process is rushed and a beneficiary is overlooked, the beneficiaries who have received a share may need to return part of their entitlement.

When we can't prove next of kin

If we are unable to prove that relatives are entitled to an estate, we may need to apply to the Supreme Court of NSW for an order to distribute the estate based on our findings.

As part of the application, commonly known as a next of kin enquiry, we need to demonstrate that we have completed an extensive genealogical investigation and that we have performed our duties fully as administrator of the estate.

The court needs to be satisfied that we have done everything possible to establish entitlements. The estate may then be distributed.



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Managing estate funds

While we undertake research, funds from the assets of the estate are held in a NSW Trustee & Guardian Common Fund. These funds earn interest that is credited to the estate.

How we can help

As a government agency, and under NSW law, we have a special legal function to administer intestate estates.

Many individuals and legal practitioners refer intestate estates to our Genealogy Unit because we are experienced in carrying out complicated research all over the world.

Fees

Scan to visit our fees



www.tag.nsw.gov.au/fees

Contact us to find out how we can help.



Visit
www.tag.nsw.gov.au



Call
1300 041 122
1300 109 290



Email
taggenealogy@tag.nsw.gov.au



Translation and interpreting service
Phone **131 450** and ask to speak to us.



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