Letters of Administration in Malaysia: What Happens When Someone Dies Without a Will?

1. Determine Whether a Person Dies Intestate

- What is intestacy and which laws applicable

Generally, a person who dies without leaving a valid will is said to have died intestate. In these circumstances, the estate of the deceased cannot be distributed according to family member's wishes. However, under the small-estate procedure, distribution by agreement can be made where all entitled beneficiaries agree

The applicable laws include Probate and Administration Act 1959 (**PAA 1959**), Distribution Act 1958 (**DA 1958**) and Small Estates (Distribution) Act 1955. This article therefore, focuses primarily on non-Muslim estates in Peninsular Malaysia.

Once it is established that the deceased died intestate, the next step is to determine the appropriate procedure for administering the deceased's estate.

2. Application for Letter of Administration

- Why do you need to apply for Letter of Administration

Under Section 2 of the Probate and Administration Act 1959 (**PAA 1959**), "administration" refers to a Letter of Administration (LA) issued by the court whether general or limited or with the will annexed or otherwise, authorizing the person named therein to administer the deceased's estate in accordance with the law. In practice, while High Court LA provides this authority, it is not the sole mechanism. Smaller or specific estates may instead be administered through statutory processes under the Small Estates (Distribution) Act 1955 or Amanah Raya Berhad depending on the estate's value and asset composition.

Therefore, obtaining Letters of Administration is an important first step in the administration of an intestate estate, as the deceased's assets cannot simply be distributed by anyone without legal authority.

- Who can apply for Letter of Administration

Section 30 of the PAA 1959 provides that where a person dies without a valid Will, the Court will generally grant Letters of Administration to persons entitled to or interested in the residuary estate.

In determining who may have interests in the deceased estate, reference may be made to the DA 1958, which sets out the persons who may be entitled to inherit the intestate's estate, usually next-of-kin. These may include the deceased's spouse, issue and parents.
In short, the right to apply for Letters of Administration is not available to everyone but is generally limited to people who have an interest in the deceased's estate.

- Procedure in Applying for Letter of Administration

Once the person interested in the deceased's estate has been identified, an application for Letter of Administration may be made to the court.

The applicant will generally be required to file cause papers via Originating Summons together with necessary supporting affidavits included:

- Death Certificate
- List of assets & liabilities
- List of beneficiaries
- Administration Oath (Order 71 rule 33, Form 161 of the Rules of Court 2012)
- Letters of Renunciation where applicable

Once the application is approved, the Court will issue the Grant of Letters of Administration to the appointed administrator. However, before the grant is extracted, the administrator may be required to execute an administration bond with sureties under Section 35 of PAA 1959 and Order 71 rule 34 of the Rules of Court 2012, unless the requirement is dispensed with by the Court. Upon extraction of the grant, the administrator may proceed to collect the assets, settle liabilities, and distribute the estate in accordance with the law.

3. Administration and Distribution of the Estate After the Grant of Letters of Administration

Upon obtaining the Grant of Letters of Administration, the administrator assumes a statutory duty under Section 68 of PAA 1959 to hold the deceased's estate on trust. The administrator is required to call in and collect the assets, convert non-cash assets into money (where necessary), and out of the estate funds, pay all funeral expenses, administration and testamentary expenses, and outstanding debts and liabilities of the deceased.

Only after all expenses, debts, and liabilities have been fully discharged and settled does the administrator hold the clear residue of the estate. In cases of total intestacy, the remaining net estate will then be distributed to the lawful beneficiaries in accordance with the statutory rules under Section 6 of the Distribution Act 1958.

- Distribution of estate if the deceased died leaving surviving spouse, issue or parent

Surviving family members	Entitlement to the estate
Spouse only — no issue and no surviving parent	100% to spouse
Spouse + parent(s) — no issue	½ to spouse; ½ to parent(s)
Issue only — no spouse and no surviving parent	100% to issue
Parent(s) only — no spouse and no issue	100% to parent(s)
Spouse + issue — no surviving parent	⅓ to spouse; ⅔ to issue
Issue + parent(s) — no spouse	⅔ to issue; ⅓ to parent(s)
Spouse + issue + parent(s)	¼ to spouse; ½ to issue; ¼ to parent(s)

Source: Section 6(1) of Distribution Act 1958

- Distribution of estate if the deceased died without leaving surviving spouse, issue or parent

If the deceased leaves no surviving spouse, issue or parent, section 6 provides a further order of succession. The estate may pass to the deceased's relatives in the following order, subject to the statutory requirements:

1. Brothers and sisters
↓
2. Grandparents
↓
3. Uncles and aunts
↓
4. Great-grandparents
↓
5. Great-granduncles and great-grandaunts
↓
6. Government of Malaysia
(in default of any entitled person, except insofar as the estate consists of land)

4. Understanding Issue Under the Distribution Act 1958

Section 3 of DA 1958 defined issues as the deceased's children including the descendants of the deceased children and defined the word child as a legitimate child and does not include an adopted child other than a child adopted under the provisions of the Adoption Act 1952 [Act 257]. However, the Federal Court in *Tan Kah Fatt* held that section 6 uses the broader concept of "issue" and that a natural offspring can qualify where the necessary lineal blood relationship is established.

- Illegitimate Children

The position of an illegitimate child in relation to intestate succession requires consideration of both the Distribution Act 1958 and the Legitimacy Act 1961.

Section 11(1) of legitimacy Act 1961 provides that an illegitimate child and his or her issue may be entitled to inherit the property of the child's biological mother if she dies intestate and leaves no other surviving legitimate issue;
The position concerning inheritance from an intestate father was subsequently considered by the Federal Court in *Tan Kah Fatt & Anor v Tan Ying* [2023] 2 MLJ 583 where the court held that the DA 1958 adopts the principle of parity, meaning that a person is a potential beneficiary as long as a lineal blood connection with the deceased can be established. The court concluded that by using the word "issue" instead of "children" in Section 6, the legislature intended to expand or enlarge the category of persons who may succeed or inherit and the DA 1958 did not whether expressly or by implication, state that only legitimate children may inherit in the case of intestacy.

Therefore, the safer proposition is that a natural child may qualify as "issue" where the required lineal blood relationship is established.

- Adopted Child

Section 3 of the DA 1958, the term "child" does not include an adopted child unless the child has been adopted under the Adoption Act 1952 [Act 257].
Therefore, only a child lawfully adopted under the Adoption Act 1952 is entitled to inherit from the adoptive parent's estate upon intestacy, and vice versa.

- Stepchild

Under section 3 of DA 1958, stepchild does not fall within the statutory meaning of 'child' merely by reason of the step-parent relationship. In *Pang Chuan Cheong v Oh Kwong Foi* [2007] 8 MLJ 354, the Court considered the relevant statutory provisions and held that 'issue' does not include a stepchild.

- <u>What happens if a child of intestate predeceases the intestate</u>

Under Section 7(1) of the Distribution Act 1958, if a child predeceases the intestate, that child's share does not lapse or disappear. Instead, the surviving issue of the deceased child takes their parent's share by representation according to their share.
This means that the deceased child's descendants' step into their parent's shoes and divide equally among themselves only the exact portion that their parent would have received had they survived the intestate.

A (The intestate) dies leaving surviving assets
↓
B (A's child) predeceases A
↓
B would have inherited a share from A
↓
B's children (D & E) may take the share which B would have taken had B survived the intestate, subject to section 7
↓
D + E (Grandchildren of A and Children of B) share B's portion.

5. Special Circumstances Affecting Distribution of Estate

- <u>Uncertain order of death between the Husband and Wife</u>

Under **Section 6(3) of the Distribution Act 1958**, where the intestate and their spouse die in circumstances where it is uncertain which of them survived the other, the section operates on a statutory presumption that the spouse did not survive the intestate for the purposes of estate distribution, this operates notwithstanding the general rule of survivorship under the Presumption of Survivorship Act 1950.
Whether the deceased is the husband or the wife, where the sequence of death cannot be established, the law treats the surviving spouse as having predeceased the intestate. Consequently, the non-surviving spouse (or their estate) cannot inherit any share of the intestate's estate, and distribution proceeds to the next entitled class of beneficiaries.

6. Conclusion

Dying without a valid will does not mean that a deceased person's estate cannot be distributed. However, the process can involve several legal steps and may become more complicated where there are issues concerning children, predeceased beneficiaries, or other family circumstances.

While the law provides a framework for the administration and distribution of an intestate estate, preparing a valid will can provide greater certainty as to how a person's assets are to be dealt with.

If you wish to make a will or require assistance with the administration of an estate, Y S LING & CO. - Advocates and Solicitors, provides legal services relating to wills, and the administration of deceased estates. You may contact the firm for further information and legal assistance tailored to your circumstances.

Disclaimer: *This article is intended for general information only and does not constitute legal advice. The appropriate procedure for administering a deceased estate depends on the nature and value of the estate and the individual circumstances of the beneficiary.*