Intestate Succession Rules in California and Pennsylvania

Posted on October 10, 2019

View this essay online:
https://academic-master.com/intestate-succession-rules-in-california-and-pennsylvania/

Intestacy Basics

Intestate succession applies when a person dies without a valid will or when part of the probate estate is not effectively disposed of by a will. In the United States, the result is determined mainly by state law rather than by one national inheritance rule. A surviving spouse and descendants usually receive priority, followed by parents, siblings, and more remote relatives, but the exact shares and definitions vary significantly by jurisdiction (Cornell Legal Information Institute, 2023). This is why statements such as “the spouse always gets half” or “children automatically divide everything equally” are unreliable. Intestacy is best understood as a statutory backup plan created by the state. It can distribute probate property, but it does not choose guardians, create trusts for vulnerable beneficiaries, minimize every tax or administrative problem, or necessarily reflect the deceased person’s relationships and preferences. The practical task after an intestate death is therefore twofold: identify which assets are actually part of the probate estate and then apply the succession law of the correct jurisdiction.

Probate vs. Nonprobate Assets

Intestacy does not control every asset a person owned or used. Life insurance with a valid beneficiary designation, retirement accounts with named beneficiaries, payable-on-death or transfer-on-death accounts, jointly owned property with survivorship rights, and assets held in a valid trust can pass outside probate. Those transfers are generally governed by the contract, title, beneficiary designation, or trust terms rather than the intestacy statute. Only after nonprobate transfers are separated should the personal representative determine the property available for intestate distribution. This distinction is essential because a surviving spouse may receive substantial assets outside probate even before the statutory intestate share is calculated.

Jurisdiction matters as well. The law of the decedent’s domicile usually governs intestate succession to personal property, while real estate is commonly governed by the law of the state where the property is located. An estate can therefore involve more than one legal system if the person lived in one state but owned land elsewhere. The probate court also needs evidence about family relationships, marriages, divorces, adoptions, deaths of relatives, and sometimes parentage. A simple

family assumption may not match the legal definition of “spouse,” “issue,” or “descendant.” Current legal guidance emphasizes that lineal descendants include children, grandchildren, and further generations descending directly from the decedent, but the way a deceased child’s share passes to later generations depends on the jurisdiction’s representation method (Cornell Legal Information Institute, 2026).

California Rules

California’s intestacy rules demonstrate why the type of property matters as much as the family tree. Under California Probate Code section 6401, a surviving spouse receives the decedent’s share of community and quasi-community property, while the spouse’s share of separate property depends on which relatives also survive. If there is no surviving issue, parent, sibling, or issue of a deceased sibling, the surviving spouse receives all of the separate intestate property. If there is one child, the issue of one deceased child, or no issue but a surviving parent or parent’s issue, the spouse generally receives one-half of the separate property. If there are multiple children or qualifying descendants of multiple deceased children, the spouse generally receives one-third of the separate property (California Probate Code § 6401, 2025).

The portion not passing to the surviving spouse then moves through the hierarchy in section 6402. It passes first to the decedent’s issue. If there is no surviving issue, it goes to the parent or parents; if no parent survives, it passes to the issue of the parents, which usually means siblings or descendants of deceased siblings, followed by more remote family categories if necessary (California Probate Code § 6402, 2025). This structure corrects the idea that California uses one fixed spouse-versus-children percentage. The calculation depends on whether the property is community or separate property and on the number and relationship of surviving relatives.

Pennsylvania Rules

Pennsylvania illustrates the danger of assuming another state’s percentages apply everywhere. Under Title 20, section 2102, the surviving spouse receives the entire intestate estate if the decedent leaves neither issue nor a parent. If there is no surviving issue but a parent survives, the spouse receives the first $30,000 plus one-half of the balance. If all surviving issue are also issue of the surviving spouse, the spouse likewise receives the first $30,000 plus one-half of the balance. If one or more of the decedent’s surviving issue are not also issue of the surviving spouse, the spouse receives one-half of the intestate estate (Pennsylvania General Assembly, 2026a).

The remaining estate, or the whole estate if there is no surviving spouse, passes under section 2103. Pennsylvania prioritizes the decedent’s issue, then parents, then brothers and sisters or their issue, followed by grandparents and other relatives according to the statutory order (Pennsylvania General Assembly, 2026b). These rules differ materially from California’s community-property system. A

family could therefore receive different results from similar facts simply because domicile and property location differ. State inheritance-tax rules can also be separate from intestacy rules and should not be confused with the statutory share itself.

One of the most confusing intestacy problems occurs when a potential heir dies before the person whose estate is being distributed. The law must decide whether that deceased heir's descendants step into the share and, if so, how the share is divided. "Per stirpes," "per capita with representation," and similar statutory methods describe different ways of performing that calculation. Under a pure per stirpes approach, the estate is divided at the children's generation, and the share of a deceased child passes down that child's branch (Cornell Legal Information Institute, 2025). Other systems may begin division at the first generation where someone is living. The difference can change how much each grandchild receives.

This is another reason not to rely on informal family language. Saying that "the grandchildren get their parent's share" may be correct in one fact pattern but incomplete in another, especially when several children predecease the decedent and leave different numbers of descendants. Adoption can also affect status because legally adopted children are generally treated as descendants of the adoptive parent for inheritance purposes, while stepchildren, foster children, and other close relationships may not inherit automatically unless a statute provides otherwise. Parentage law, posthumous birth, disclaimers, survivorship periods, and slayer statutes can further alter who qualifies as an heir. These issues should be resolved from the governing statute and probate record rather than assumptions about family closeness.

Estate Administration

Heirs do not usually receive probate property immediately after death. A court may appoint a personal representative or administrator who is responsible for securing property, identifying assets, obtaining valuations, notifying creditors, paying enforceable debts and administrative expenses, handling required tax matters, and eventually distributing the remaining estate. The representative should also search carefully for a will, trust, beneficiary designations, deeds, account records, insurance policies, digital assets, business interests, and debts. Discovering a valid will or beneficiary designation can change what belongs in the intestate estate.

Digital assets require particular attention because online accounts, cryptocurrency, cloud files, domain names, intellectual property, and electronically stored financial information may have real or sentimental value. Access depends on law, service-provider terms, estate-planning documents, and authentication requirements. The representative should preserve devices and records rather than attempting unauthorized access. The same caution applies to real property, vehicles, closely held businesses, and valuable personal items: premature distribution can create liability if creditors, taxes, or other heirs later establish a valid claim.

Estate Planning

Some people assume they do not need a will because the intestacy statute would give property to the same relatives they would choose. Even when the ultimate beneficiaries are similar, a will can reduce uncertainty by naming an executor, defining gifts, planning for minor or disabled beneficiaries, addressing personal property, coordinating with trusts, and expressing choices that intestacy cannot make. Intestacy also cannot account for many relationships that matter socially but may not qualify legally, such as an unmarried partner, close friend, stepchild without a qualifying legal relationship, or charitable organization.

A will is not the only planning tool. Beneficiary designations, trusts, ownership forms, powers of attorney, and health-care directives address different needs. The purpose of estate planning is to coordinate them. A person who updates a will but forgets an old retirement-account beneficiary may still produce an unexpected result because the beneficiary designation can control that asset. Avoiding intestacy therefore requires attention to the entire ownership and beneficiary structure rather than one document.

Conclusion

Intestate succession is a necessary legal safety net, but it is not a universal formula. The first question is which assets actually belong to the probate estate; the second is which jurisdiction’s law applies; only then can statutory heir shares be calculated. California illustrates how community and separate property rules affect a spouse’s share, while Pennsylvania uses a different formula involving fixed dollar amounts and percentages. Representation rules can also change distributions when children or other heirs die before the decedent. Before any heir receives property, the personal representative must identify assets, settle valid obligations, and follow probate procedures. Because family structures, property titles, beneficiary designations, and state statutes differ, a general explanation cannot determine the result in a specific estate. The practical lesson is that intestacy should be treated as the state’s default plan rather than a substitute for individualized estate planning. People who want control over beneficiaries, administration, guardianship, trusts, or nontraditional family relationships are usually better served by creating and periodically updating a coordinated estate plan.

References

California Probate Code § 6401. (2025). *Surviving spouse’s intestate share*.

California Probate Code § 6402. (2025). *Order of intestate succession*.

Cornell Legal Information Institute. (2023). *Intestate succession*.

Cornell Legal Information Institute. (2025). *Pure per stirpes*.

Cornell Legal Information Institute. (2026). *Lineal descendant*.

Pennsylvania General Assembly. (2026a). *20 Pa.C.S. § 2102: Share of surviving spouse*.

Pennsylvania General Assembly. (2026b). *20 Pa.C.S. § 2103: Shares of others than surviving spouse*.