

Intestate Succession Rules

Posted on October 10, 2019

Intestate succession is the legal process used to determine who receives property when a person dies without a valid will or when a will does not dispose of the entire probate estate. The original essay correctly identifies intestacy as a backup system and notes that a surviving spouse, children, parents, siblings, or more distant relatives may inherit according to state law. It also recognizes the need to gather records, secure property, notify institutions, pay debts, and complete probate where required. Several points need correction. Intestacy rules are state-specific, the decedent's domicile generally governs personal property while the location of real estate may control that property, and not every asset passes through probate. California does not always give a spouse two-thirds and children one-third. Pennsylvania's inheritance tax varies by the beneficiary's relationship rather than imposing a universal 15 percent rate.

General Information, Not Individual Legal Advice

Estate law depends on jurisdiction, family structure, title, beneficiary designation, marital-property rules, tax status, and the date of death. This discussion explains general principles and examples from California and Pennsylvania. It cannot determine the heirs or tax liability in a specific estate. A personal representative or family facing uncertainty should consult the probate court, official state guidance, and a qualified estate professional in the relevant jurisdiction.

When Intestacy Applies

Complete intestacy occurs when a person dies without a valid will. Partial intestacy occurs when a will exists but fails to dispose of some property, a gift fails, or a beneficiary does not survive and no substitute provision applies. A will can also be denied probate because of improper execution, lack of testamentary capacity, undue influence, revocation, or another legal defect. Intestacy rules then determine who receives the affected probate assets.

Probate and Nonprobate Property

The intestacy statute governs the probate estate, not every asset associated with the decedent. Life insurance with a valid beneficiary, retirement accounts, payable-on-death or transfer-on-death accounts, property held in a trust, and some jointly owned property pass through contract, trust, or title. These assets may still affect taxes, creditor rights, or family disputes, but they do not ordinarily pass under the intestate heir schedule. The first administrative task is therefore to classify each asset rather than assume everything belongs in probate.

Domicile and the Location of Property

A decedent's domicile—the place considered the permanent legal home—usually governs intestate succession to personal property. Real estate is often governed by the law of the state or country where it is located. A person domiciled in Pennsylvania who owns land in California may therefore require a primary probate proceeding in Pennsylvania and an ancillary proceeding in California. Residence, domicile, citizenship, and temporary location are related but not identical concepts.

The Personal Representative

The personal representative collects and protects assets, identifies beneficiaries and creditors, files required documents, pays valid expenses, and distributes the remaining estate. When appointed under a will, the person may be called an executor; when appointed in an intestate estate, administrator is a common term. Modern statutes often use personal representative for both. Authority usually begins after appointment or issuance of court documentation, although limited emergency action may be necessary to protect property.

Immediate Steps After Death

Family members should obtain certified death certificates, secure the home and valuables, care for dependents and pets, locate estate-planning documents, and identify urgent bills and insurance. Mail can be forwarded, but financial accounts should not be accessed using the decedent's credentials. Automatic payments and joint accounts require review. Valuable property should be documented, and no heir should remove items before authority and ownership are clear.

Locating a Will or Trust

A search may include the decedent's files, safe-deposit box, attorney, accountant, digital records, and court deposit system where available. A photocopy may raise additional legal questions if the original cannot be found. Trust documents are important because the decedent may have transferred assets during life. A pour-over will can direct probate property into a trust, while the trust determines final distribution. The absence of a document in the home does not prove that none exists.

Vital and Family Records

Birth, marriage, divorce, adoption, and death records may be needed to establish relationships. The original reference to one "Deaths and Marriages Act 1965" is not a general U.S. rule. Vital-record systems are governed by state law and administrative procedures. Family history can become

complicated by adoption, nonmarital children, posthumous conception, assisted reproduction, stepchildren, and disputed parentage. The governing statute must be consulted rather than relying on informal family assumptions.

Creating the Estate Inventory

The representative should identify real property, vehicles, bank accounts, investments, business interests, digital assets, personal property, claims owed to the decedent, and potential refunds. Values are generally determined as of a legally relevant date, commonly the date of death. Appraisals may be required. Liabilities include mortgages, taxes, medical bills, credit cards, loans, funeral expenses, and administration costs. An inventory supports court reporting, tax work, insurance, and fair distribution.

Digital Assets

Email, cloud storage, social-media accounts, digital photographs, cryptocurrency, online businesses, and domain names may have financial or emotional value. Access depends on service agreements, federal and state law, fiduciary authority, and the user's online instructions. A representative should not guess passwords or impersonate the decedent. Digital-asset laws often distinguish access to the content of communications from access to a catalog or account record. Estate planning should address these assets explicitly.

Probate Court

Probate is the legal process for validating a will where one exists, appointing a representative, resolving claims, and transferring probate property. Some estates qualify for simplified procedures based on value, asset type, or relationship to a surviving spouse. Filing in the wrong county or state can delay administration. Court forms and deadlines vary. The representative owes fiduciary duties and may be personally responsible for loss caused by self-dealing or improper distribution.

Notice to Creditors

Creditors are paid from estate property according to statutory priorities and claim procedures. The representative may need to publish notice and give direct notice to known or reasonably ascertainable creditors. A debt is not automatically valid because a collector demands payment. Claims should be verified. Heirs usually do not become personally liable for the decedent's individual debts merely because they are heirs, although joint debts, guarantees, secured property, community obligations, and wrongful distributions create different issues.

Taxes

The estate may need to file the decedent's final income-tax return, estate or trust income-tax returns, inheritance-tax returns, and possibly a federal estate-tax return. Federal estate tax applies only above the exemption and under current law, but rules can change. State estate or inheritance taxes differ. Tax should be calculated from official current guidance rather than a general internet percentage. Distributing assets before tax and creditor obligations are understood can expose the representative to liability.

Intestate Priority

Most statutes prioritize the surviving spouse and descendants, followed by parents, siblings and their descendants, grandparents and their descendants, and increasingly remote relatives. Exact shares depend on who survives and sometimes whether descendants are from the current marriage. A person closer in statutory degree can exclude a more remote relative. Friendship, caregiving, or verbal promises do not create inheritance rights unless recognized through another legal doctrine or asset arrangement.

Meaning of “Issue” and Representation

“Issue” generally means lineal descendants, including children, grandchildren, and further descendants. If a child dies before the decedent, that child's descendants may take by representation. States use different systems, such as per stirpes or per capita at each generation. The method affects how shares are divided among branches. A statement that “the children divide equally” may be incomplete when one child died leaving several descendants.

Surviving Spouse

Marriage status at death is critical. A legally divorced former spouse generally does not inherit as a spouse, while separation without divorce may not end inheritance rights. Common-law marriage is recognized only in some jurisdictions and under defined conditions. Domestic partners may receive rights in certain states. A pending divorce, premarital agreement, waiver, abandonment rule, or disqualification can alter the result. The representative should not decide marital validity informally.

California Community Property

California is a community-property state. Each spouse generally owns one-half of community property during marriage. When one spouse dies intestate, the surviving spouse receives the decedent's one-

half of community property, resulting in ownership of the whole community asset, subject to debts and administration rules. The surviving spouse similarly receives the decedent's portion of quasi-community property under California Probate Code section 6401. This rule differs from division of the decedent's separate property.

California Separate Property

Under California Probate Code section 6401, the surviving spouse receives all intestate separate property if the decedent leaves no surviving issue, parent, sibling, or descendants of a deceased sibling. The spouse receives one-half if the decedent leaves one child or that child's issue, or no issue but a parent, sibling, or their issue. The spouse receives one-third if the decedent leaves more than one child, one child plus descendants of another deceased child, or descendants of two or more deceased children. The original two-thirds-to-spouse statement is therefore incorrect.

California Descendants and Other Heirs

The portion not passing to a spouse moves according to California's statutory order. Descendants take first, followed by parents, then siblings and their descendants, with more remote classes if necessary. California has detailed rules for representation, parent-child relationships, and survival. Stepchildren do not automatically inherit as descendants merely because a close relationship existed, although a narrow equitable doctrine may apply in unusual circumstances.

Pennsylvania Intestate Shares

Pennsylvania's shares differ from California's and depend on whether the surviving descendants are also descendants of the surviving spouse. The spouse may receive the entire estate when there are no surviving descendants or parents, or a statutory amount plus a fraction in other family structures. The specific statute and date of death should be checked. It is unsafe to transfer California assumptions into Pennsylvania administration.

Pennsylvania Inheritance Tax

Pennsylvania imposes inheritance tax based largely on the beneficiary's relationship to the decedent. Current state guidance lists a zero-percent rate for transfers to a surviving spouse and for a qualifying transfer from a child aged 21 or younger to a parent; 4.5 percent for direct descendants and lineal heirs; 12 percent for siblings; and 15 percent for other heirs, with exemptions for qualifying charities, institutions, and government entities. Joint property between spouses is exempt. The original statement of a general 15-percent tax is therefore incomplete.

Children Born Outside Marriage

Modern intestacy law generally protects children regardless of whether their parents were married, subject to rules establishing legal parentage. Historical distinctions have been reduced because of constitutional equality principles. The required proof may differ for maternity, paternity, assisted reproduction, or posthumous conception. A child's legal relationship should be determined under the governing statute and court orders, not social stigma.

Adopted Children

Adoption generally creates inheritance rights between the adopted child and adoptive family and may alter rights through the biological family. Exceptions and special rules can apply to stepparent adoption and other situations. Informal caregiving without legal adoption does not automatically create descendant status. Adoption records or court orders may be necessary when identifying heirs.

Disinheritance and Advance Gifts

Intestacy does not carry out an undocumented desire to exclude a relative. A valid will is ordinarily needed. Some states treat certain lifetime gifts as advancements against an intestate share only when contemporaneous writing or acknowledgment exists. Family members should not subtract old gifts based on memory alone. Clear records prevent conflict.

Survival Requirements

An heir may need to survive the decedent by a statutory period. Simultaneous or closely timed deaths can affect distribution. If the order cannot be established, survivorship statutes determine treatment. Beneficiary designations may contain their own survival terms. These rules are important in accidents affecting several family members.

Disclaimer, Unworthiness, and Slayer Rules

An heir can sometimes disclaim property through a formal and timely procedure, causing the share to pass as though the heir predeceased. People may disclaim for tax, benefit, creditor, or family reasons, but legal advice is essential. A person responsible for intentionally and feloniously killing the decedent is generally barred by slayer statutes. Abuse, abandonment, elder financial exploitation, or failure to support may affect inheritance in some jurisdictions under specific laws.

Escheat

If no eligible heir can be found after applying the statutory order, property may escheat to the state. This is a final outcome, not the ordinary result of failing to identify an heir quickly. Genealogical research and notice procedures may be required. Later claims may be possible under unclaimed-property rules, subject to law. The state does not take simply because relatives are temporarily unknown.

Distribution

Distribution should occur only after authority is established, assets are valued, creditor and tax issues are handled, and required court approval or accounting is completed. The representative may distribute cash, transfer specific property, sell assets, or obtain agreements among heirs as permitted. Equal percentage shares do not mean every object must be physically divided. Personal property often causes emotional conflict disproportionate to its market value, so an agreed selection or sale process should be documented.

Family Allowances and Homestead Protection

Some states protect a surviving spouse or minor children through family allowances, exempt property, homestead rights, or elective shares. These protections can apply before ordinary intestate distribution or even when a will exists. They recognize that immediate family members may need housing and support during administration. The representative should identify them early because they may affect creditor and heir calculations.

Small-Estate Procedures

Many states provide affidavits or simplified court processes for estates below a statutory threshold or containing certain assets. Thresholds and waiting periods change. Using a small-estate affidavit when the estate is too large or disputed can create liability. Even simplified administration requires identifying debts, heirs, and asset title accurately. The absence of a full probate case does not eliminate fiduciary responsibility.

Common Mistakes

Common mistakes include using the decedent's online banking credentials, distributing property before paying claims, assuming a verbal promise overrides intestacy, overlooking beneficiary designations, failing to insure a vacant home, mixing estate and personal funds, selling property

without authority, and relying on another state's share chart. Another mistake is assuming the oldest child automatically becomes administrator or owns the estate. Priority to serve and inheritance ownership are separate legal questions.

Planning to Avoid Unwanted Intestacy

A valid will can nominate a representative, name beneficiaries, address personal property, nominate guardians for minor children, and reduce uncertainty. A trust may manage property during incapacity and after death. Beneficiary designations and account titles should be reviewed because they can override a will. Powers of attorney end at death and do not authorize estate administration afterward. Planning should be updated after marriage, divorce, birth, death, relocation, or major asset changes.

Conclusion

Intestate succession is a statutory safety net, not a personalized estate plan. It applies to probate property left without effective disposition and distributes that property through a legally defined family hierarchy. Administration involves securing assets, identifying authority, classifying probate and nonprobate property, notifying creditors, paying expenses and taxes, determining heirs, and completing distribution. California's community and separate-property rules demonstrate why a simple spouse-and-children fraction is unreliable, while Pennsylvania's relationship-based inheritance tax shows why tax rates cannot be generalized. Careful classification, current official law, and professional guidance are essential because one error can affect creditors, taxes, and every heir.

References

California Probate Code §§ 6400–6414.

California Probate Code § 6401.

Pennsylvania Department of Revenue. (2026). *Inheritance tax*.

Uniform Law Commission. (2010, amended 2019). *Uniform Probate Code*.