PacificCPE

COURSE
40754A

Executor Essentials: Intestate Estates and Taking Inventory of Assets

When someone dies without a will, the rules change significantly. This course explains how intestate succession works and what executors and administrators must do when no valid will exists. It then transitions to the essential task of inventorying estate assets, covering what counts, how to locate and document property, and when expert appraisals are needed. Professionals advising clients through estate administration will benefit from understanding how asset identification lays the foundation for probate, tax filings, and eventual distribution.

CREDIT HOURS 2 | FIELD OF STUDY BUSINESS | EXAM QUESTIONS 10

Start Course ↓ | Final Exam Copy ↓

Assignment

- Study the full course materials included here.
- Complete the review questions after each chapter.
- Answer 10 final exam questions.
- Final exam is scored immediately, 70% or better passes.
- Certificate of completion is available in your account.
- Failed exams can be retaken free of charge.

Course Objectives

- Recall who can inherit under intestate succession laws.
- Identify the types of property that qualify as real estate.

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Chapter 1: WHEN THERE'S NO WILL

Chapter Objective

After completing this chapter, you should be able to:

- Recall who can inherit under intestate succession laws.

If the deceased person—like many Americans—didn't leave a will, you'll have to look elsewhere for your marching orders.

Keep in mind that many kinds of assets aren't passed by will anyway. Some common examples include:

- Life insurance proceeds
- Real estate, bank accounts, and other assets held in joint tenancy, tenancy by the entirety, or community property with right of survivorship
- Property held in a living trust
- Funds in an IRA, a 401(k), or another retirement plan account for which a beneficiary was named
- Funds in a payable-on-death (POD) bank account, and
- Stocks or other securities held in a transfer-on-death (TOD) account.

To find out who inherits these kinds of property, you'll need to locate the documents in which the co-ownership or beneficiary designation was established—for example, a declaration of trust, a joint tenancy deed, or a life insurance policy. (Chapter 2 explains what to look for.)

To find out who inherits other assets—generally, solely owned property for which no beneficiary has been formally named, such as a house owned by a widow—you'll need to consult state law. Every state has "intestate succession" laws that parcel out property to the deceased person's closest relatives. The result might not be what the person would have wanted—but it's too late for that.

WHO'S IN CHARGE

When no will exists and therefore no one has been named executor, you must turn to state law.

It will provide a list of people who are eligible to fill the role, in order of priority. Generally, the person chosen is called an "administrator," not an executor. Some states, however, call anyone who's in charge of an estate the "personal representative," whether the person was nominated in a will or is appointed by the probate court in the absence of a will.

If the estate does not go through probate (because all or most property can be transferred without it — see Chapter 2 of course 40758B), no court will be involved, and no administrator will be appointed. You and surviving family members can choose someone to informally take charge of things. If you can't decide who should step up, consider using your state law's priority list for administrators.

If a probate court proceeding is necessary, the court will choose someone based on the priority list set out in state law. Most states make the surviving spouse or registered domestic partner, if any, the first choice.

Adult children are usually next. Or, the court might simply appoint the closest relative who stands to inherit something. (The theory is that someone who hopes to receive property from the estate is likely to manage it prudently.) For example, in Missouri, next in line after the surviving spouse is anyone entitled to property who the court believes "will best manage and preserve the estate." (Mo. Rev. Stat. § 473.110.)

How Courts Choose Administrators: Two Examples

California has a typical approach. (Cal. Prob. Code § 8461.) Here is California's priority list:

1. Surviving spouse or registered domestic partner
2. Children
3. Grandchildren
4. Other issue (other direct descendants of the deceased)
5. Parents
6. Brothers and sisters
7. Issue of brothers and sisters (the deceased person's nieces and nephews, and their children)
8. Grandparents
9. Issue of grandparents (the deceased person's uncles and aunts, and their children)
10. Children of a predeceased spouse or domestic partner
11. Other issue of a predeceased spouse or domestic partner
12. Other next of kin
13. Parents of a predeceased spouse or domestic partner
14. Issue of parents of a predeceased spouse or domestic partner
15. Conservator or guardian of the estate
16. Public administrator (someone the court pays to administer estates when no one else is available)
17. Creditors
18. Any other person

Georgia simply allows the heirs (the people who will inherit the property under state law) to unanimously choose someone. (Ga. Code Ann. § 53-6-20.) If they all agree, the judge appoints someone, using this short list of preferences:

1. The surviving spouse, unless an action for divorce or separate maintenance was pending between the couple
2. One or more other heirs, or the person the majority of the heirs chooses
3. Any other eligible person
4. Any creditor of the estate
5. The county administrator

The judge must appoint the person with the highest priority under the law. If that person turns down the job or is disqualified for some reason—for example, because the person isn't old enough or has a conflict of interest—the judge will go to the next person on the list.

Abeneficiary who objects to having someone who has priority serve as administrator can argue the point in court. Generally, it's up to the person who objects to prove that there's a good reason why the person shouldn't serve.

WHO GETS WHAT: THE BASIC RULES

Every state has laws that direct what happens to assets when someone dies without a valid will and the assets were not left in some other way (such as a living trust). The idea behind these intestate succession laws is to do what the deceased person would have wanted. Whether the state hits the mark in an individual situation depends, of course, on the circumstances.

How State Laws Work

Generally, only spouses (or civil union or registered domestic partners in states where that's an option) and blood relatives inherit under intestate succession laws. Unmarried partners, friends, and charities get nothing.

If the deceased person was married, commonly the surviving spouse gets the largest share. If the couple had no children, the surviving spouse often receives all the property. If there are also surviving children, in many states they share the property with the surviving spouse. More distant relatives inherit only if no spouse or child survives. In the rare event that no relatives at all can be found, the state takes the assets. While this is a typical description of intestate succession laws, each state has its own variation.

To get an idea of how intestate succession works, take a look at some of New York's inheritance rules, above. (N.Y. Est. Powers & Trusts Law § 4-1.1.) You don't have to understand the whole table here, or your state's entire intestate succession statute. You would need to find out only how your state's law applies to your family situation.

In the nine "community property" states, the task is made more complicated if the deceased person was married. That's because married people own two legally distinct types of property, separate and community. (To greatly oversimplify, community property is what either spouse acquires while married, except for gifts and inheritances. Separate property is everything else.) Depending on the family makeup, community property and separate property might go to different people.

California's rules are shown above, as an example of intestate succession laws in a community property state. (Cal. Prob. Code § 6401 and following.)

For purposes of inheritance, a surviving registered domestic partner is treated just like a surviving spouse.

Who Inherits When There's No Will: New York	
Surviving Family	**Who Inherits What**
Spouse, but no children, grandchildren, or other direct descendants	Spouse gets everything.
No spouse, but children or other direct descendants	Children or other direct descendants divide the property.*
Spouse and children	Spouse gets $50,000 plus half of the remaining property that goes through probate. The children share the other half.*
No spouse or children, but one or both parents	Parents get everything (though a parent who failed to provide for the child up to age 21 might not get anything).
No spouse, children, or parents, but siblings	Siblings divide everything.**
No spouse, children, parents, or siblings, but nieces or nephews	Nieces or nephews divide everything.
No spouse, children, parents, siblings, nieces, or nephews, but one or more grandparents	Half goes to the surviving grandparent(s) on one parent's side and half to the surviving grandparent(s) on the other parent's side. If there are no surviving grandparents on one side, that half goes to the deceased grandparents' direct descendants.

*If a child is deceased, that deceased child's children also get a share.

**If a sibling is deceased, that deceased sibling's children also get a share.

Who Inherits When There's No Will: California		
Surviving Family	**Separate Property**	**Community Property**
Spouse but no children (or other direct descendants) parent, sibling, or direct descendants of siblings	Spouse gets everything.	Spouse gets all.
Spouse and parent but no children (or other direct descendants)	Spouse gets half, parent gets half.	Spouse gets all.
Spouse and one child.	Spouse gets half, child gets half.**	Spouse gets all
Spouse and more than one child	Spouse gets one-third, children share two-thirds.**	Spouse gets all.
Spouse and sibling(s) but no children (or other direct descendants) or parent	Spouse gets half, siblings get half.**	Spouse gets all.
No spouse or children, but parents	Parents get everything.*	No community property
No spouse, but children or other direct descendants	Children share everything.**	
No spouse, children, or parents, but siblings	Siblings (including half-siblings) get everything.**	
No spouse, children, parents, or siblings, but grandparents or their descendants	Grandparents divide everything. If no grandparents, their descendants divide everything.**	
No spouse, children, parents, grandparents, or descendants of children, parents or grandparents, but descendants of predeceased spouse	Descendants of predeceased spouse divide everything.**	

Who Inherits When There's No Will: California		
Surviving Family	**Separate Property**	**Community Property**
No spouse, children, parents, grandparents, or descendants of children, parents or grandparents, or descendants of predeceased spouse	Next of kin divide everything	
*But if deceased person's spouse died within the prior 15 years, property attributable to that spouse goes to certain of their close relatives. ** Children (other direct descendants) of a deceased member of the group (except for surviving spouse's children) get the deceased member's share.		

	Community Property States
Arizona	New Mexico
California	Texas
Idaho	Washington
Louisiana**	Wisconsin***
Nevada*	

**This book doesn't cover Louisiana law. **Wisconsin's system of property ownership is like that of community property states but is called "marital property."*

Misconduct That Bars Heirs From Inheriting

All states have rules that bar certain people from inheriting, based on their conduct toward the deceased person.

For example, someone who criminally caused the death of the deceased person is almost never allowed to profit from the death, either under intestate succession laws or under a will. The state laws that set out these rules are often called "slayer statutes." In states that don't have specific statutes, the same rule has generally been enforced by the courts.

In many states, a parent who abandoned a child, refused to support the child, or committed certain crimes against any child cannot inherit from the child. Most of these states prohibit inheritance