



Chapter 4

Intestate Succession



About 67% in U.S. have no Will or Estate Plan

WHY?

*Lack of understanding importance
“don’t have much property”
indifference
cost, time and effort*



Learning Goals

- Contrast the law that governs the passing of real property with the law that governs the passing of personal property when someone dies intestate
- Describe when property passes according to the law of intestate succession
- State the share that a surviving spouse inherits under the law of intestate succession in your state



Learning Goals

- Identify the people, other than a surviving spouse, who will inherit and the share each will receive under the law of intestate succession in your state
- Indicate, under the law of your state, the disposition of property owned by people who die intestate survived by no spouse and no ascertainable kindred



Intestacy

- Intestate
 - To die without a will
 - Law of intestate succession: how intestate property passes
 - Law of the state where decedent is domiciled determines how personal property is passed
 - Law of the state where property is located determines how real property is passed
 - State laws differ

The Passing of Intestate Property

- Probate property
 - Passes after expenses with court supervision
- Nonprobate property
 - Passes directly to heirs without court supervision; no intestate succession applies*

*Becomes probate property if designated beneficiary(ies) or surviving owner with rights of survivorship predeceased

The Passing of Intestate Property

- Property included in will passes according to law of intestate succession when:
 - Will drawn without residuary clause
 - Person(s) named in residuary clause die before testator
 - Children omitted unintentionally from parents' will
 - Person refuses to accept gift



Rights of Surviving Spouse

- Surviving spouse rights determined first
- Varies from state to state
- May depend on who else survives, such as children
- Divorce ends rights of surviving spouse
 - Legal separation does not end rights of surviving spouse



Rights of Other Heirs

- Determining rights of other heirs
 - Made after surviving spouse
 - Heirs: anyone who inherits property
 - Kindred: people related by blood
 - Next of kin: nearest of kindred to decedent



Rights of Other Heirs

- **CONSANGUINITY** (descended from same ancestor)
 - Lineal: related in direct line, either downward or upward
 - Collateral: related by ancestor, not direct line
- AFFINITY**: related by marriage
- HALF BLOOD**: share a common mother or father
 - Laws of intestate succession differ among states



Rights of Other Heirs

- Degrees of kindred
 - Determine relatives who are closest to decedent
 - Look to the degree of relationship
 - Closest ancestor to decedent

Rights of Other Heirs

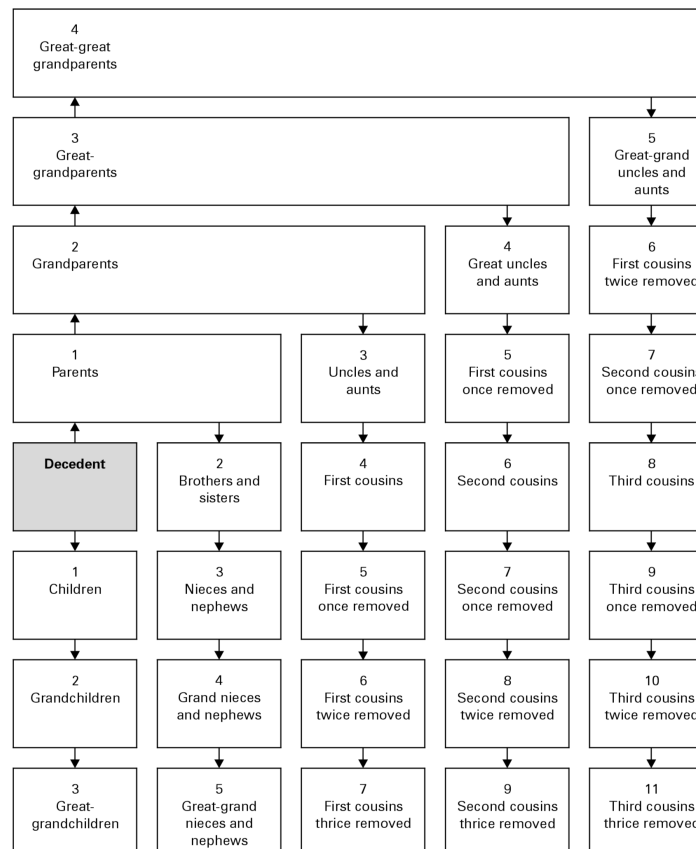


EXHIBIT 4-2 Degrees of Kindred



Rights of Other Heirs

- Lineal descendants
 - Related by common ancestor and often referred to as issue or descendants
 - Inherit per stirpes: children stand in place of their parents for purposes of inheritance
 - Inherit per capita: Each grandchild receives an equal share of their parent's share



Children: Rights of Other Heirs

- Posthumous issue
 - After-born children inherit the same as if born during lifetime of decedent
- Adopted children
 - If legally adopted, treated same as kindred or blood relatives
- Illegitimate children
 - Children born out of wedlock
 - Common law: could not claim part of estate
 - Modern times: can make a claim if paternity is determined

Rights of Other Heirs

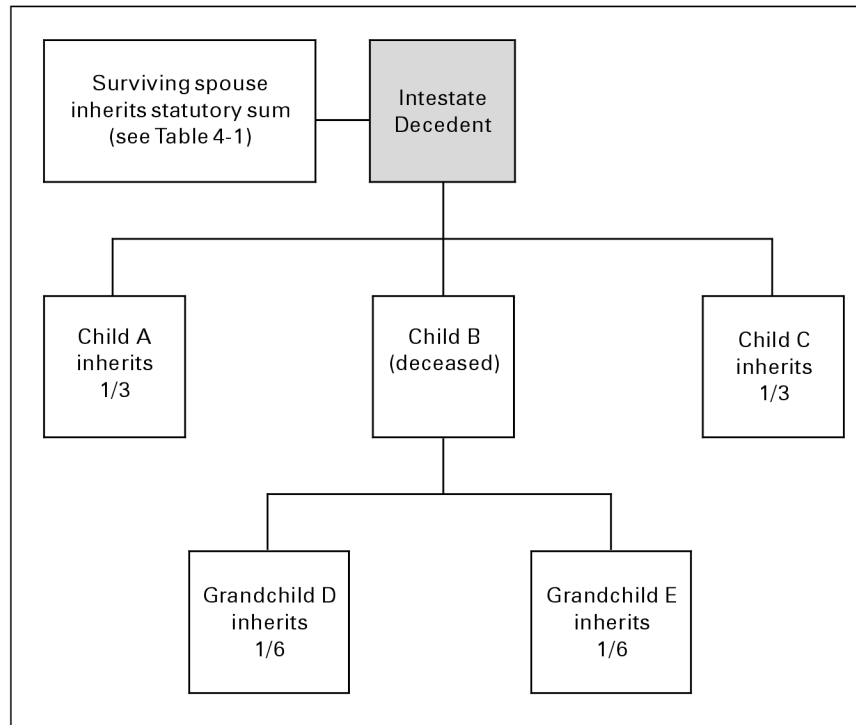


FIGURE 4-3 Rights of Children and Grandchildren of Intestate Decedent

When someone dies intestate and is survived by issue, the part of the estate not passing to a surviving spouse passes to the decedent's issue by right of representation.

Rights of Other Heirs

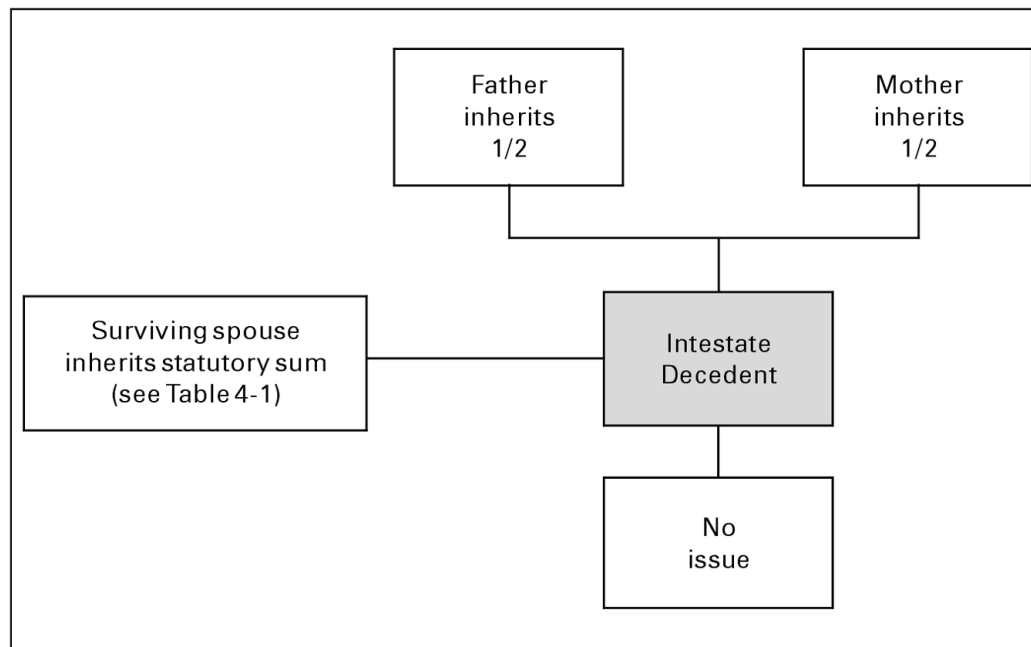


FIGURE 4-4 Rights of Parents of Intestate Decedent

When someone dies intestate survived by no issue, the part of the estate not passing to a surviving spouse passes to the decedent's father and mother equally or to the survivor of them.



Rights of Other Heirs

- Siblings
 - Brothers and sisters of the decedent
 - If survived by their children, nieces and nephews may be able to take by right of representation

Rights of Other Heirs

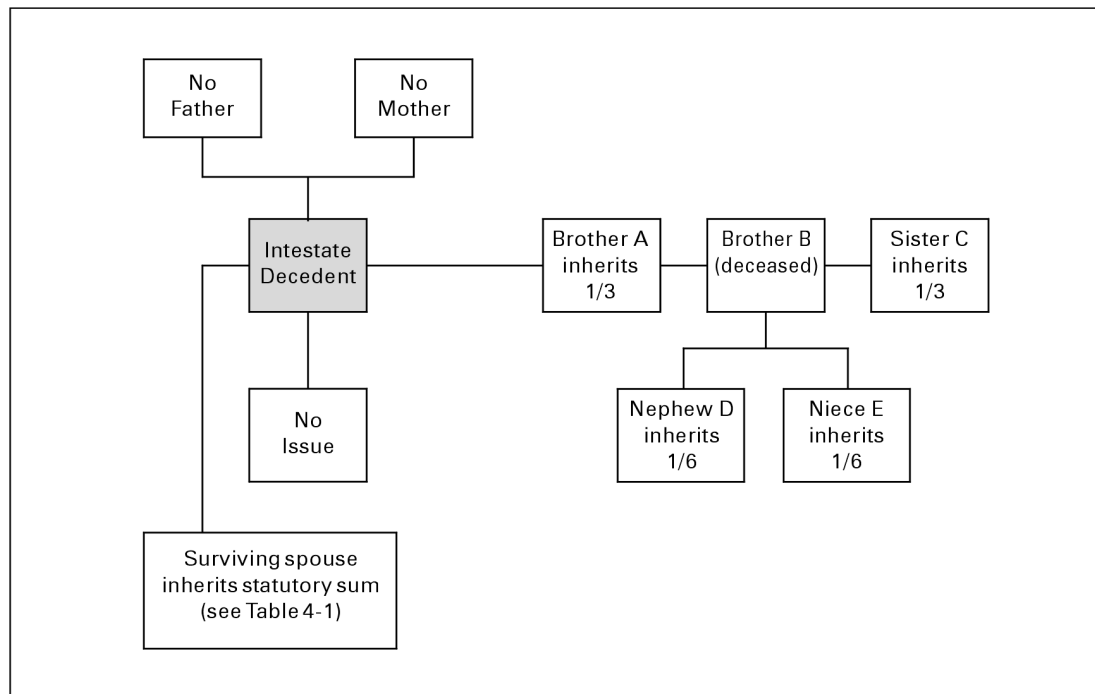


FIGURE 4-5 Rights to Siblings of Intestate Decedent

When someone dies intestate survived by no issue and no mother or father, the part of the estate not passing to a surviving spouse passes to the decedent's brothers and sisters, with the children of any deceased brothers and sisters taking their parent's share by right of representation.



Rights of Other Heirs

- Next of kin
 - Closest living blood relative
 - Grandparents
 - Aunts, uncles, and cousins

Rights of Other Heirs

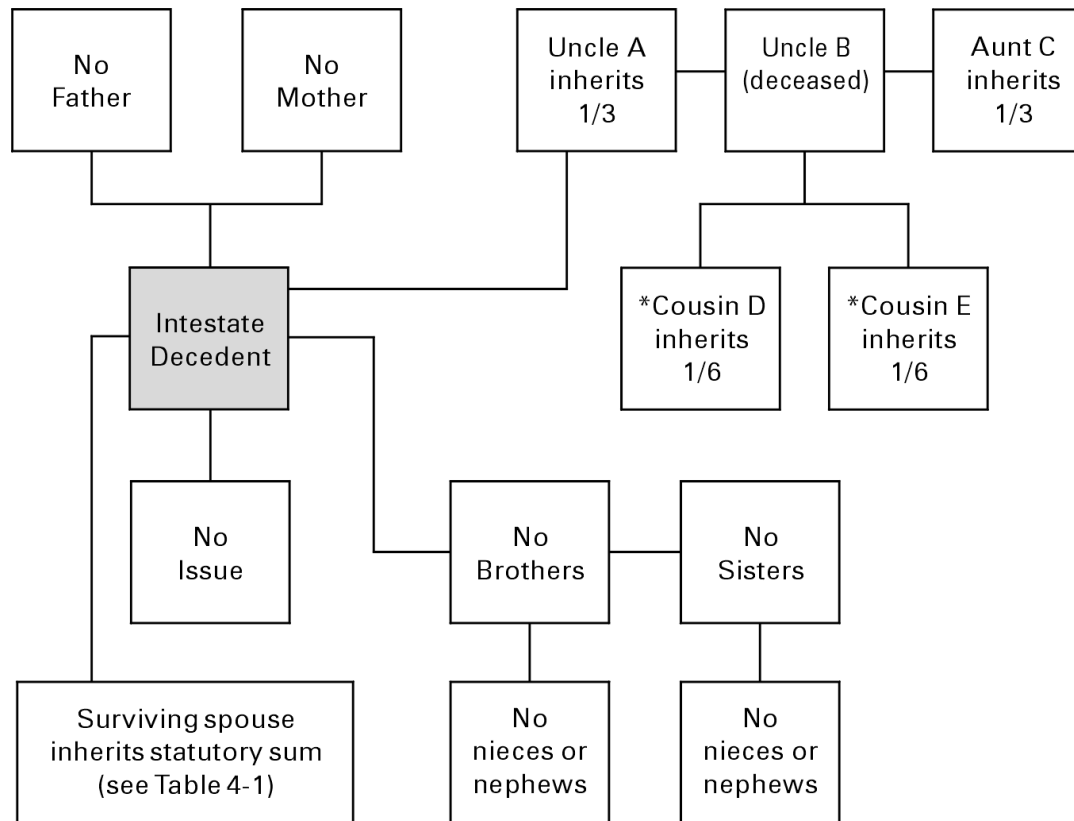


EXHIBIT 4-6 Rights of Extended Family of Intestate Decedent



Rights of Other Heirs

- Escheat (last resort)*
 - When people die without a spouse or kindred, property passes to state where they were domiciled
 - Determined by state law (varies among states)

*Some states recognize step-children as heirs to prevent escheat if no spouse or kindred found



Per Capita with Representation

- A system for distributing property in which distributees take shares by right of representation at the generation with living members closest to the decedent.

Note: also known as modern per stirpes. Virginia seems to follow this form; similar to per stirpes

Explanation of how to determine Modern Per Stirpes

- Following the family tree and the statute for descent and distribution (using Virginia statute for this example), find the first surviving family member(s):
 - Surviving Spouse of decedent?
 - Children of decedent?
 - Are any from prior relationship? (only if spouse survives too)
 - Mother and/or father of decedent?
 - Siblings of decedent?
 - Parents or Parents of decedent? Moiety for each?
 - And more, if needed to arrive at generation to determine shares



In-Class Intestacy Exercise

- Winifred Whippersnap

Other Intestate Succession Issues

- Simultaneous death
 - When family members, usually husband and wife, die at the same time and it is impossible to determine who died first
 - Uniform Simultaneous Death Act
 - Allows property of each person to be distributed as if he or she had survived, unless a will or trust provides otherwise



The Passing of Intestate Property

- Homicide by heir or devisee
 - Does not allow persons to benefit from their own wrongdoing
 - Slayer statutes
 - Civil law
 - Proved by a preponderance of the evidence



Other Intestate Succession Issues

ADVANCEMENT

- A gift made during life that is intended to be an early distribution of the donee's share of an intestate donor's estate.
- Value of that gift is added to total value of estate and allocated as part of donee's share (hotchpot)



Other Intestate Succession Issues

Disclaimer

- ***The renunciation of an interest in a decedent's property:***
 - The disclaimer must be memorialized in a writing that is signed by the disclaiming heir.
 - The disclaimer document must be timely filed with the proper authorities.
 - A copy of the disclaimer instrument usually must be delivered to the administrator so the administrator knows not to deliver estate property to the heir.



Other Requirements for Valid Disclaimer

- Disclaimers are irrevocable.
- Partial disclaimers are allowed.
- If the heir has accepted the property or any of its benefits, it is too late for the heir to disclaim even if any applicable time period has not yet elapsed.
- The disclaimer must be unconditional.

Note: Disclaimed property passes as if person disclaiming pre-deceased the decedent.



Equitable Conversion

- Treating real property as personal or personal property as real for reasons of fairness.

Example: person dies before settlement on the contract for sale of his real estate.

Assignment or Release of Expectancy to Inherit

- A living person has no heirs, an heir apparent does not have an interest that rises to the level of being the heir's property.
- Instead, the hopeful heir's interest is a mere expectancy.
- Accordingly, an heir apparent has nothing to transfer.
- The heir apparent, however, may agree (1) to transfer the inheritance once received, or (2) not to claim a future inheritance.
- *Risky to Assignee and not always enforceable*