

Intestate Law in Ontario

Ontario has statutory provisions that detail who inherits an estate when the deceased did not have a valid Will.

Definitions:

Intestate: The law refers to a person who dies without a Will as an “intestate”.

Issue: includes a descendant conceived before and born alive after the person's death

Spouse: means either of two persons who,
(a) are married to each other, or
(b) have together entered into a marriage that is voidable or void, in good faith on the part of the person asserting a right (“conjoint”)

“net value”: means the value of the property after payment of any charges thereon and the debts, funeral expenses and expenses of administration, including any succession duty

Preferential Share: \$200,000 is prescribed as the amount of the preferential share

Scenario 1 – Intestacy where spouse and no issue – spouse inherits property

In this scenario a deceased did not have a valid Will. He was survived by his spouse, but there were no descendants conceived before and born alive after the deceased death. In this instance the spouse receives the entirety of the deceased's property. However, if the deceased owned property in joint tenancy then that specific asset does not fall into the estate of the deceased and is not included in his property to be distributed via the law of intestacy.

Scenario 2 – Intestacy with spouse and issue – estate worth less than \$200,000 – spouse inherits

In this instance assume there is both a spouse and descendants of the deceased. If the deceased died intestate and the estate's net value is less than or equal to \$200,000.00 then the spouse is entitled to the property absolutely.

Scenario 3 – Intestacy with spouse and issue – estate worth more than \$200,000 – spouse and children inherit.

Where the estate's net value is more than \$200,000.00 and the deceased died intestate then the first \$200,000.00 is inherited by the spouse. The balance of the estate is divided differently depending on how many children of the deceased were conceived before and born alive after the parent's death

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- 1. Spouse & 1 child.** Where a person dies intestate in respect of property and leaves a spouse and one child, the spouse is entitled to one-half of the residue of the property after payment of the \$200,000.00 to the spouse. So if the net value of the estate was \$320,000.00. The spouse would receive the first 200,000.00 and the last \$120,000.00 would be divided with \$60,000.00 going to the child and \$60,000.00 going to the spouse. In total the spouse would receive \$260,000.00 and the child \$60,000.00.
- 2. Spouse & more than 1 child.** If a person dies intestate and leaves a spouse and two or more children then the spouse is entitled to 1/3 of the residue of the property after payment of the \$200,000.00 and the children divide the 2/3 balance. So if the net value of the estate was \$320,000.00. The spouse would receive the first 200,000.00 and the last \$120,000.00 would be divided with \$80,000.00 (being 2/3 of \$120,000.00) being divided equally between the children and \$40,000.00 (being 1/3 of \$120,000.00) going to the spouse. In total the spouse would receive \$240,000.00 and the children would receive \$80,000.00.

Scenario 4 – Intestacy with no spouse and no issue – parents inherit.

Where a person dies intestate in respect of property and leaves no spouse or issue, the property shall be distributed between the parents of the deceased equally or, where there is only one parent surviving the deceased, to that parent absolutely.

Scenario 5 – Intestacy with no spouse – no issue – no parents – brothers and sisters inherit.

Where a person dies intestate in respect of property and there is no surviving spouse, issue or parent, the property shall be distributed among the surviving brothers and sisters of the intestate equally, and if any brother or sister predeceases the intestate, the share of the deceased brother or sister shall be distributed among his or her children equally.

Scenario 6 – Intestacy with no spouse – no issue – no parents – no brothers and sisters inherit – nephews and nieces inherit.

Where a person dies intestate in respect of property and there is no surviving spouse, issue, parent, brother or sister, the property shall be distributed among the nephews and nieces of the intestate equally without representation.

Scenario 7 – Intestacy with no spouse – no issue – no parents – no brothers and sisters inherit – no nephews and nieces inherit – next of kin inherit.

Where a person dies intestate in respect of property and there is no surviving spouse, issue, parent, brother, sister, nephew or niece, the property shall be distributed among the next of kin of equal degree of consanguinity (relationship by blood) to the intestate equally without representation. So how do we determine who is the closest next of kin? The Act states that “degrees of kindred shall be computed by counting upward from the deceased to the nearest common ancestor and then downward to the relative”

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