

## Intestacy – Distribution of Property without a Will

Under the law of [wills and trusts](#), you can write a will that leaves any of your property to anyone you like.

But what happens when somebody dies without a will? A person who dies without having made a will is said to have died “intestate,” and the resulting situation is known as “[intestacy](#).”

Western society generally favors private ownership of property, and disfavors letting property sit in legal limbo. It’s far preferable to create rules which finalize, as quickly as possible, ownership of property. This, in theory, will ensure that property will get put to economically productive use, rather than spending years tied up as the subject of a legal dispute.

For this reason, every state in the U.S. has laws dealing with situations in which someone dies without a will.

### **Who Gets My Property if I Die Without a Will?**

Your property will go to your closest living relative.

Usually, this is the spouse of the decedent (the person who died). However, the laws on this subject vary slightly among the states. In some states, if the decedent has a spouse and children, his or her estate will be split evenly between them. In other states, this only applies if the children are adults (since, presumably, if the entire estate goes to the surviving spouse, he or she will use it to care for minor children).

If there is no surviving spouse, all of the estate will go to the decedent’s children, in equal shares. What if the decedent had multiple children, and one of them died before the decedent, but after having children of her own? There’s a solution for situations like this, too.

Suppose the decedent has 3 grown children named Al, Beth, and Claire. Claire died before the decedent, but had two children of her own (the decedent’s grandchildren). Their names are Dave and Ed. What percentage of the estate are Dave and Ed entitled to? They’re each entitled to equal shares of what Claire would have received if she were alive. Since Claire was one of 3 children, she is entitled to one third of the estate. Her children, each being entitled to half of her share, will therefore each get 1/6 of her estate.

So, the final breakdown is this: Al and Beth each get one third of the estate (2/3 total), and Dave and Ed each get one sixth of the estate (1/3 total).

### **What if the Decedent Had No Spouse or Children?**

When it comes to distributing intestate property to spouses and children, the law of most states is pretty similar. After all, there's no real debate that, in almost every case, the decedent's spouse and/or children are the people closest to them.

If there are no living spouses or children, the property goes to the next-closest living relative. The exact order of preference varies from state to state, but it generally goes something like this: first, the estate will go all the way down the line of descent from the decedent (going to grandchildren, great-grandchildren, etc.). If there are no relatives there, it goes up the line of descent (parents, grandparents, great-grandparents, etc.).

If there are no living relatives up or down the line of descent, the property will go to siblings, cousins, aunts and uncles. After this, it will go to former spouses, and up and down their lines of descent.

Most intestacy laws are quite comprehensive. If you can prove that you're related to someone, no matter how distant, chances are that the law of your state gives you a place in line when it comes to inheriting that person's property. Of course, it will be near the back of the line, so it's likely that someone more closely-related to the decedent will get the property.

### **What if Absolutely No Living Relatives Can Be Found?**

In the rare case where someone dies without a will, and leaves no living relatives, the property "escheats" to the state. This simply means that the state gets full ownership of it. It's free to do with the property what it wishes, like any other owner. Usually, any money that escheats to the state is simply deposited in the state's general fund. Other property is usually sold at auction.

### **I Want to Leave My Property to Someone Other Than My Relatives**

The only way to do this is to make a will. Once you make a will, the law of intestacy becomes irrelevant. You can leave your property to anybody you wish.

It's important to know that if you have a life partner, but are not married or in a domestic partnership, your partner will not automatically inherit your property through intestacy. If you want your partner to inherit your property upon your death, it's essential that you [draft a will](#) stating as much, and your partner should do the same.

### **Conclusion**

If you are content with the idea of your entire estate automatically passing to your spouse and/or children upon your death, you may not need to write a will. However, if you want to leave some of your property to someone else, you shouldn't rely on the laws of intestacy to accomplish this, and should speak with an experienced wills and trusts attorney and draft a will.