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Understanding Intestacy: If You Die Without an Estate Plan

When a person dies without having a valid will in place, his or her property passes by what is called "intestate succession" to heirs according to state law. In other words, if you don't have a will, the state will make one for you. All fifty states have laws (or "statutes") of this kind on the books.

The purpose of intestate succession statutes is to distribute the decedent's wealth in a manner that closely represents how the average person would have designed his or her estate plan, had that person had a will. However, this default can differ dramatically from what the person really would have wanted. Even where it is known what the person intended, no exceptions are made where no valid will exists. Nor are there any exceptions made based on need or special circumstances.

1990 UNIFORM PROBATE CODE

The 1990 Uniform Probate Code (the Code) serves as the starting point for many states' laws. Nevertheless, the laws of different states can vary greatly from each other and from the Code itself. However, the Code represents the best reference for a general discussion.

Under the Code, close relatives take property instead of distant relatives. The classes of relatives whose members receive property under the Code include the decedent's surviving spouse, descendants (children, grandchildren, etc.), parents, descendants of decedent's parents (siblings, nieces and nephews), grandparents, and descendants of grandparents (aunts and uncles and cousins). Adopted descendants are treated the same as biological descendants. If none of the above-named classes of relatives include any persons qualified to take the estate, the property "escheats" (goes by default) to the state.

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Share Of Surviving Spouse

Under the Code, a surviving spouse is either entitled to the entire estate (after expenses and taxes of the decedent) or a substantial part of it. For example:

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The surviving spouse is entitled to the entire net estate if the decedent is also survived by children who are all children of the decedent and the surviving spouse.

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The surviving spouse is also entitled to the entire net estate if the decedent is not survived by descendants and parents.

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If parents survive but no descendants survive, a surviving spouse takes the first \$200,000 of the net estate plus three-fourths of anything exceeding that amount.

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If the decedent is survived by descendants who are also the descendants of the surviving spouse, and by descendants who are not descendants of the surviving spouse, the surviving spouse takes the first \$150,000 of the net estate plus one-half of anything exceeding that amount.

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If the decedent is not survived by any descendants who are also descendant of the surviving spouse but is survived by descendants who are not descendants of the surviving spouse, the surviving spouse takes the first \$100,000 of the net estate plus one-half of anything exceeding that amount.

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Share of Descendents

Under the Code, if no spouse survives but descendents of the decedent survive, the descendents take the entire net estate by "right of representation."

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Share of Parents

Under the Code, if a decedent is not survived by a spouse or descendents, the entire net estate passes to the decedent's parents equally or, if only one survives, to the survivor.

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Share of Other Relatives

Under the Code, if a decedent is not survived by a spouse, descendents, or parents, the entire net estate passes to the decedent's parent's descendents (siblings of the decedent). If there are no siblings or descendents of siblings, the net estate goes to the decedent's grandparents or their descendents.

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Net Estate

The "Net Estate" is the amount left for distribution to heirs after all debts, family protections, taxes, and administrative expenses have been paid. "Family protections" include homestead allowances, family allowances, and exempt property allowances.

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