

Intestacy – Estate distribution



Estate distribution					
Province or territory	Spouse* only	Spouse and one child ^{1,2}	Spouse and more than one child ^{1,2}	Children only ¹	No spouse and no children
Alberta	All to spouse ³	All to Spouse ⁴	All to spouse ⁴	All to children	Generally in the following order: <ul style="list-style-type: none"> • Parents • If neither survive, then siblings • If none survive, then niece(s) and/or nephew(s) • If none survive, then next of kin • If none survive, then estate assets are left to the provincial or territorial government ⁵
British Columbia	All to spouse ⁶	Split equally	1/2 to spouse and 1/2 to children	All to children	
Manitoba	All to spouse ⁷	All to spouse ⁸	All to spouse ⁸	All to children	
New Brunswick	All to spouse	Split equally	1/3 to spouse and 2/3 to children	All to children	
Newfoundland & Labrador	All to spouse	Split equally	1/3 to spouse and 2/3 to children	All to children	
Northwest Territories	All to spouse ⁹	Split equally	1/3 to spouse and 2/3 to children	All to children	
Nova Scotia	All to spouse	Split equally	1/3 to spouse and 2/3 to children	All to children	
Nunavut	All to spouse ¹⁰	Split equally	1/3 to spouse and 2/3 to children	All to children	
Ontario	All to spouse ¹¹	Split equally	1/3 to spouse and 2/3 to children	All to children	
Prince Edward Island	All to spouse ¹²	Split equally	1/3 to spouse and 2/3 to children	All to children	
Quebec	All to spouse if neither the deceased's parents nor the deceased's siblings and their children are alive. If the deceased's father and/or mother is alive, then 2/3 to spouse and 1/3 to father and/or mother. If the deceased's parents are not alive but the deceased's siblings are alive, then 2/3 to spouse and 1/3 to siblings. If the deceased's parents and siblings are not alive but the siblings' children are alive, then 2/3 to the spouse and 1/3 to the siblings' children.	1/3 to spouse and 2/3 to child	1/3 to spouse and 2/3 to children	All to children	

Estate distribution					
Province or territory	Spouse* only	Spouse and one child ^{1,2}	Spouse and more than one child ^{1,2}	Children only ¹	No spouse and no children
Saskatchewan	All to spouse ¹³	Split equally	1/3 to spouse and 2/3 to children	All to children	Generally in the following order: <ul style="list-style-type: none"> • Parents • If neither survive, then siblings • If none survive, then niece(s) and/or nephew(s) • If none survive, then next of kin • If none survive, then estate assets are left to the provincial or territorial government ⁵
Yukon	All to spouse ¹⁴	Split equally	1/3 to spouse and 2/3 to children	All to children	

*A spouse is a legally married spouse, except in the provinces/territories of Alberta, British Columbia, Manitoba, Northwest Territories, Nunavut, and Saskatchewan where spouse also includes a person who meets the definition of common law partner in that province/territory.

- 1) In all provinces and territories except Manitoba, the surviving issue (i.e. children and grandchildren) of a deceased child will take that child's share.
- 2) After allocation of spouse's preferential share.
- 3) If there is a spouse and an "Adult Interdependent Partner" (AIP) (those who have (a) cohabited for at least three years in a relationship of interdependence, or (b) cohabited in a relationship of some permanence if there is a child of the relationship or (c) entered into an AIP agreement), they will split the entire estate equally (if there are no children) or the preferential share (if there are children). The surviving spouse of the deceased will be deemed to have predeceased the deceased if (a) the deceased and the surviving spouse had been living separate and apart for more than 2 years at the time of the deceased's death; (b) are parties to a declaration of irreconcilability under the Alberta Family Law Act; or (c) if they are parties to an agreement or order in respect of their property or other marital and family law issues.
- 4) Where there is at least one surviving child of the deceased who is not a child of the surviving spouse, then the intestate estate in excess of the greater of \$150,000 and 50% of the intestate estate is divided equally among the deceased's children.
- 5) In Quebec, the estate is divided equally between the father and mother and the siblings (or if no siblings, their descendants).
- 6) If two or more persons are entitled to a spousal share of the intestate estate, they share the spousal share in portions agreed upon, or if they cannot agree, as determined by the court.
Two persons cease being spouses if (a) in the case of a marriage, an event occurs that causes an interest in family property as defined in Part 5 of the British Columbia *Family Law Act* to arise or (b) in the case of a marriage-like relationship, one or both persons terminate the relationship.
- 7) If at the time of death, the deceased had more than one spouse, the entitlement of the spouse whose relationship with the deceased was the most recent at the time of the deceased's death has priority over the spouse whose relationship was earlier. This is subject to certain exceptions. In addition, if at the time of the deceased's death, the deceased and their spouse were living separate and apart and certain conditions are met (i.e. during the period of separation, one or both spouses made an application for divorce or equalization under Manitoba's *The Family Property Act*, and the application was pending or had been dealt with by final order), the spouse shall be treated as if they predeceased the deceased.
- 8) Where there is at least one surviving child of the deceased who is not a child of the surviving spouse, the share of the surviving spouse is (a) \$50,000 or 50% of the intestate estate, whichever is greater and (b) 50% of any remainder of the intestate estate after allocation of the share provided in (a).
- 9) A spouse will not be able to inherit a share of the estate where (a) before death of the deceased, a divorce proceeding was commenced and the spouses had not reconciled; (b) before the death of the deceased, the spouses were separated and either spouse had made an application to determine their property entitlement under the Northwest Territories *Family Law Act* or had signed a domestic contract respecting the division of property; (c) immediately before the death of the deceased, the surviving spouse was living in a conjugal relationship with another person, within or outside of marriage; or (d) immediately before the death of the deceased, the spouses were separated and the deceased had entered into a spousal relationship with another person.
- 10) A spouse cannot share in the intestate estate where (a) before the death of the deceased, either spouse had commenced a divorce proceeding and the spouses had not reconciled; (b) before the death of the deceased, the spouses were separated and either spouse had made an application to determine their entitlement under Nunavut's *Family Law Act* or the spouses had entered into a domestic contract respecting the division of property; (c) immediately before the death of the deceased, the surviving spouse was cohabiting with another person; or (d) immediately before the death of the deceased, the spouses were separated and the deceased had entered a spousal relationship with another person.

- 11) In Ontario, any separated spouse will be considered to have predeceased the deceased if after January 1, 2022: (a) they lived separate and apart as a result of their marriage breakdown for three years immediately preceding the deceased's death; (b) they entered into a valid separation agreement under Ontario's *Family Law Act*; (c) the court made an order, or an arbitral award was made, respecting their rights and obligations in the settlement of their affairs arising from the breakdown of the marriage; or (d) at the time of the deceased's death, the couple was living separate and apart as a result of the breakdown of the marriage.
- 12) The surviving spouse will not receive any share of the deceased's intestate estate if they are living in a conjugal relationship with another person at the time of the deceased's death.
- 13) The surviving spouse will not inherit any share of the deceased's intestate estate if the spouses (a) were living separate and apart for more than 2 years at the time of the deceased's death; (b) were opposing parties to a proceeding under the *Divorce Act (Canada)*, or Saskatchewan's *The Family Property Act* or *The Family Maintenance Act, 1997* at the time of the deceased's death; (c) are parties to an agreement or order with respect to their property or other spousal or family issues which finalizes their affairs in recognition of the termination of their spousal relationship; or (d) if the spouse of the deceased is cohabiting with another individual in a spousal relationship at the time of the deceased's death.
- 14) The surviving spouse will not inherit any share of the deceased's estate, unless the court orders otherwise, if the spouses had, immediately before the death of the deceased, separated for not less than one year with the intention of living separate and apart and had not resumed cohabitation.



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