

Intestate Succession in Florida

What happens if you die without a will? Learn about intestacy in Florida.

Only assets that would have passed through your will are affected by intestate succession laws. Usually, that includes only assets that you own alone, in your own name.

Many valuable assets don't go through your will, and aren't affected by intestate succession laws. Here are some examples:

- property you've transferred to a living trust
- life insurance proceeds
- funds in an IRA, 401(k), or other retirement account
- securities held in a transfer-on-death account
- payable-on-death bank accounts, or
- property you own with someone else in joint tenancy or tenancy by the entirety.

These assets will pass to the surviving co-owner or to the beneficiary you named, whether or not you have a will.

To learn more about these types of assets, go to the How to Avoid Probate (<http://www.nolo.com/legal-encyclopedia/ways-avoid-probate>) section of Nolo.com or read about Avoiding Probate in Florida (<http://www.nolo.com/legal-encyclopedia/florida-avoiding-probate-32070.html>).

Who Gets What in Florida?

Under intestate succession, who gets what depends on whether or not you have living children, parents, or other close relatives when you die. Here's a quick overview:

If you die with:	here's what happens:
• children but no spouse	• children inherit everything
• spouse but no descendants	• spouse inherits everything
• spouse and descendants from you and that spouse, and the spouse has no other descendants	• spouse inherits everything
• spouse and descendants from you and that spouse, and the spouse has descendants from another relationship	• spouse inherits 1/2 of your intestate property • your descendants inherit 1/2 of your intestate property
• spouse and descendants from you and someone other than that spouse	• spouse inherits 1/2 of your intestate property • your descendants inherit 1/2 of your intestate property
• parents but no spouse or descendants	• parents inherit everything
• siblings but no spouse, descendants, or parents	• siblings inherit everything

The Spouse's Share in Florida

In Florida, if you are married and you die without a will, what your spouse gets depends on whether or not you have living descendants -- children, grandchildren, or great-grandchildren. If you don't, then your spouse inherits all of your intestate property. If you do, they and your spouse will share your intestate property as follows:

If you die with children or other descendants from you and the surviving spouse, and your surviving spouse has no descendants from previous relationships. Your surviving spouse inherits everything.

If you die with children or other descendants from you and the surviving spouse, and your surviving spouse has descendants from previous relationships. Your surviving spouse inherits half of your intestate property and your descendants inherit the other half.

Example: Bill is married to Karen, and they have two grown children. Karen also has a son from a previous marriage. Bill and Karen own a large bank account in joint tenancy, and Bill took out a life insurance policy naming Karen as the beneficiary. When Bill dies, Karen receives the life insurance policy proceeds and inherits the bank account outright. Bill also owns \$200,000 worth of other property that would have passed under a will, so Karen inherits \$100,000 worth of that property. The remaining \$100,000 goes to Bill's and Karen's two children.

If you die with descendants who are not the descendants of your surviving spouse. Your spouse inherits half of your intestate property and your descendants inherit the other half.

Example: Barrett is married to Jed and also has a 12-year-old daughter from a previous marriage. Barrett owns a house in joint tenancy with Jed, plus \$200,000 worth of additional, separate property that would have passed under a will if Barrett had made one. When Barrett dies, Jed inherits the house outright and \$100,000 worth of Barrett's property. Barrett's daughter inherits the remaining \$100,000 share of Barrett's property.

Children's Shares in Florida

If you die without a will in Florida, your children will receive an "intestate share" of your property. The size of each child's share depends on how many children you have and whether or not you are married. (See the table above.)

For children to inherit from you under the laws of intestacy, Florida must consider them your children, legally. For many families, this is not a confusing issue. But it's not always clear. Here are some things to keep in mind.

- **Adopted children.** Children you legally adopted will receive an intestate share, just as your biological children do.
- **Foster children and stepchildren.** Foster children and stepchildren you never legally adopted will not automatically receive a share.
- **Posthumous children.** Children conceived by you but not born before your death will receive a share.
- **Children born outside of marriage.** If you were not married to your children's mother when she gave birth to them, they will receive a share of your estate if (1) you participated in a marriage ceremony that turned out to be void, (2) a court establishes your paternity, or (3) you acknowledge your paternity in writing.
- **Grandchildren.** Your grandchildren will receive a share only if their parent (your child) has died before you do.

If you want to read the law, Florida Code § 732.106 (http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0700-0799/0732/0732PART1ContentsIndex.html) and 732.108

(http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0700-0799/0732/Sections/0732.108.html) cover parent-child relationships.

This can be a tricky area of the law, so if you have questions about your relationship to your parent or child, get help from an experienced attorney.

Will the State Get Your Property?

If you die without a will and don't have any family, your property will "escheat" into the state's coffers. However, this very rarely happens because the laws are designed to get your property to anyone who was even remotely related to you. For example, your property won't go to the state if you leave a spouse, children, siblings, parents, grandparents, aunts or uncles, great uncles or aunts, nieces or nephews, cousins of any degree, or the children, parents, or siblings of a spouse who dies before you do.

Other Florida Intestate Succession Rules

Here are a few other things to know about Florida intestacy laws.

- **Half-relatives.** "Half" relatives inherit as if they were "whole." That is, your sister with whom you share a father, but not a mother, has the same right to your property as she would if you had both parents in common.
- **Posthumous relatives.** Relatives conceived before – but born after – you die inherit as if they had been born while you were alive.
- **Immigration status.** Relatives entitled to an intestate share of your property will inherit whether or not they are citizens or legally in the United States.