

Beneficiaries: When Someone Dies Without a Will in Alberta



This booklet is for anyone who wants to know more about who inherits the estate of a person who dies without a Will in Alberta. It explains what the law says and provides examples of common situations.

This booklet provides information about Alberta law. This booklet gives general information only, not legal advice.



*You should **NOT** rely on this booklet for legal advice.
It provides general information on **Alberta law only**. 2019*

DISCLAIMER

The contents of this booklet are provided as general information only. It is not legal advice. If you have a legal problem, you should consult a lawyer.

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A person dies intestate if they die without a will.

These rules apply to deaths occurring on or after February 1, 2012. For deaths before February 1, 2012, see the *Intestate Succession Act*.

The law assumes that the deceased would have left their estate to their family if they had made a will.

If the deceased was First Nations and ordinarily lived on-reserve, the law is different. For more information, contact:

BearPaw Education 780.428.0187

www.bearpaweducation.ca

or Indigenous and Northern Affairs Canada

<http://bit.ly/2J7DlYo>

Two problems come up when someone dies without a will:

1. There is no one appointed to deal with the estate;
2. There is no formal, written record of what the deceased wanted to happen with their estate.

There are two laws in Alberta that deal with these problems.

First, the *Estate Administration Act* sets out who can apply to the court for a grant of administration for the deceased's estate. This person is the administrator. The Act sets out a list of people who can apply. **No one has authority to deal with an intestate person's estate without permission from the court.**

For more information on who can apply to be the administrator and on getting a grant of administration, see CPLEA's

Guide to Getting a Grant of Probate or Administration in Alberta

Alberta's *Wills and Succession Act* sets out who can inherit the deceased's estate after the court appoints an administrator. The administrator must first pay off the deceased's debt using the assets in the estate. Remaining assets are sold and the money received is given to the beneficiaries.

To be eligible to receive a gift, a beneficiary must be alive or in their mother's womb on the day the intestate person dies.

A beneficiary still receives their part of the estate even if they die before the estate is distributed. The beneficiary's gift would form part of their own estate.

An **adult interdependent relationship** is a term unique to Alberta for relationships outside of marriage and governed by Alberta's *Adult Interdependent Relationships Act*.

For more information, see CPLEA's **Living Together** booklet.

The law describes different scenarios based on the deceased's relationships. Below are the most common scenarios and beneficiaries.

Descendant means a person related to you and who lives after you die, such as a child or grandchild. It may be that the person's children have all died but the person has grandchildren. Those grandchildren are the person's descendants. A person's parents, grandparents, siblings, nieces or nephews, aunts or uncles, etc. are not their descendants.



The deceased was married or in an adult interdependent relationship and did not have any descendants.

The estate goes to the deceased's spouse/partner.

EXAMPLE Bob was married to Sally for 20 years but did not have any kids. Bob dies. Sally inherits all of Bob's estate.



The deceased was married or in an adult interdependent relationship and had children (or grandchildren) with that spouse/partner.

The estate goes to the deceased's spouse/partner only.

EXAMPLE Bill and Julian had been adult interdependent partners for 10 years. They adopted three children together. Neither Bill nor Julian had any other children. Bill dies. Julian inherits all of Bill's estate.

*A **per stirpes distribution** means that the estate is divided evenly among one generation. If someone in that generation has died and does not have descendants, they do not inherit a share. Their share is divided among the other people in that generation. If someone in that generation has died but has surviving children, then the children split their parent's share, and so on. See page 7 for an example of a *per stirpes* distribution.



The deceased was married or in an adult interdependent relationship and had descendants but not with that spouse/partner.

The deceased's spouse/partner inherits a part (the greater of \$150,000 or 50% of the estate) and the rest goes to the deceased's descendants *per stirpes*.*

EXAMPLE Javier and Maria had been in an adult interdependent partnership for four years. They did not have any children together but Javier had three sons from an earlier marriage. One of his sons died in a tragic accident two years ago and left behind two little children. Javier's estate is worth \$500,000. Maria inherits half of Javier's estate (since half of \$500,000 is greater than \$150,000). The rest of the estate is divided into 3 equal shares. Javier's two living sons each inherit 1/6 of his estate. Javier's deceased son's children each inherit 1/12 of Javier's estate (they split the 1/6 share that their dad would have received if he was still alive).

Where the deceased and a surviving spouse are separated, the surviving spouse does not inherit any of the deceased's estate.

Being separated means the deceased and surviving spouse:

- have been living separate and apart for more than 2 years at the deceased's date of death; or
- are named in a declaration of irreconcilability; or
- have signed an agreement that shows their intent to end the marriage.



The deceased had descendants but no spouse/partner.

The estate goes to the deceased's descendants *per stirpes*.*

EXAMPLE Margaret was not in a relationship when she died. She had four children from earlier relationships. Her oldest son died leaving two children. Margaret's estate is divided into four shares. Margaret's three surviving children each inherit 1/4 of her estate. The other 1/4 of the estate is divided equally between Margaret's two grandchildren from her deceased son. Each of these grandchildren inherits 1/8 of Margaret's estate.

The deceased person had no spouse/partner and no children.

The law lists several classes of people who can be beneficiaries, in priority. If no one from a class is alive, then go to the next class:



- Surviving parents;
- Descendants of parents (i.e. siblings, nieces and nephews);
- Grandparents or descendants of grandparents;
- Great-grandparents or descendants of great-grandparents.

The estate is distributed *per stirpes** among the people in the applicable class.

EXAMPLE If the deceased's parents are both alive, they each inherit 50% of the estate and no one else inherits anything. If only one parent is alive, then that parent inherits 100% of the estate. If the deceased's parents are both dead, then look to the next class. If there are surviving siblings or nieces or nephews, then the estate is distributed to those people *per stirpes*.* If not, then move to the next class, and so on.

The deceased had no spouse/partner or blood relatives.



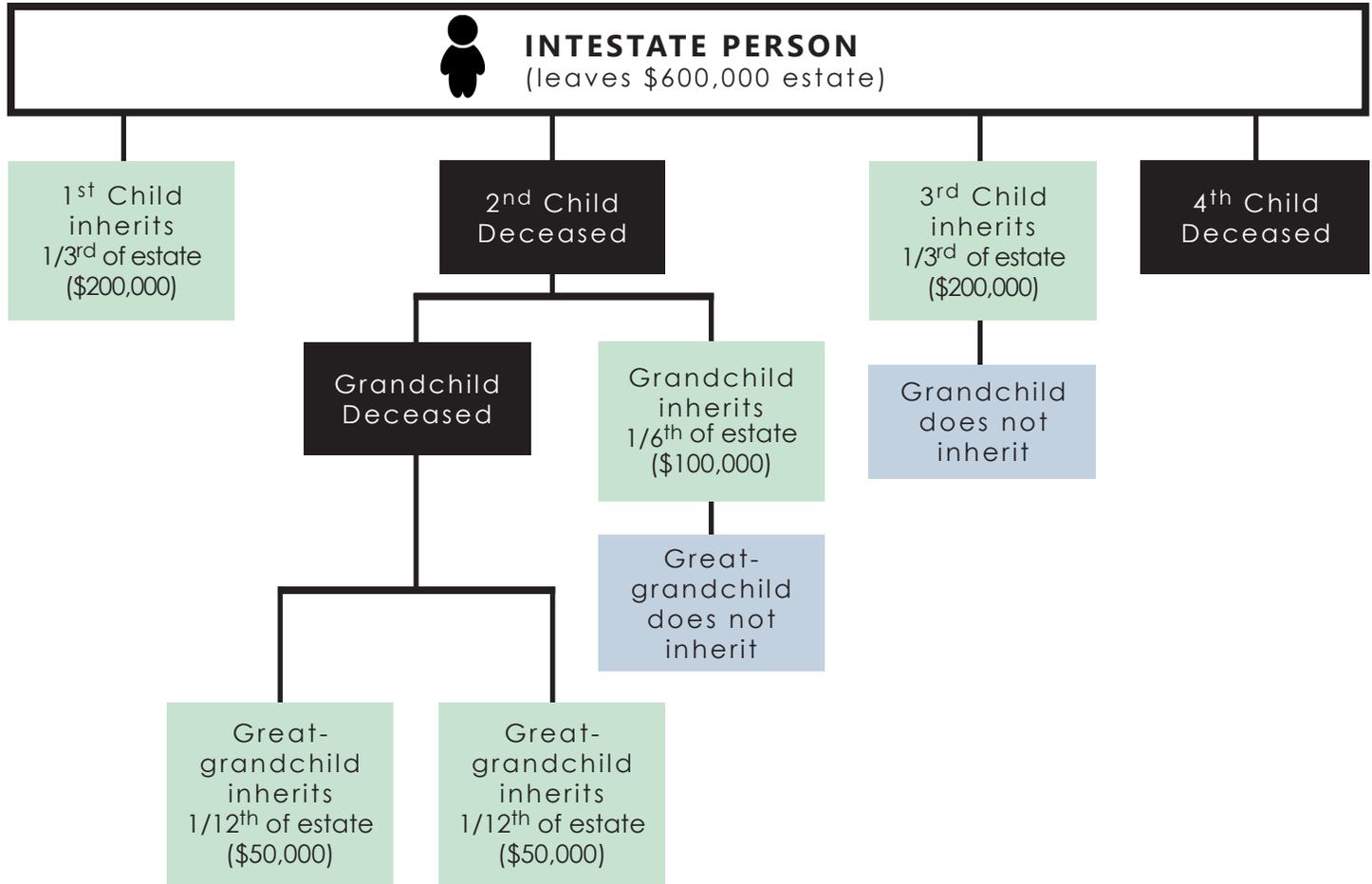
Alberta's *Unclaimed Personal Property and Vested Property Act* says that the administrator must give to the Government of Alberta any part of the estate that is not claimed by a valid beneficiary within 2 years of the date the grant of administration is issued. The Government keeps this property (usually money) for ten years. If no one claims the property within 10 years, then the Government becomes the owner of the property.

EXAMPLE Billy did not know who his family was. He did not have a spouse/partner or any children. When Billy died, his best friend, Alex, applied for a grant of administration. Since Billy had no spouse/partner or blood relatives, Alex sold all of Billy's belongings. After two years, Alex gave the money he received to the Government of Alberta. No relatives came forward to claim the estate. After ten years, the money became the Government's money.

The situations described above are the most common situations. Your situation may be different and so the beneficiaries on intestacy may be different.

Consult with a lawyer for more information.

Example of a *per stirpes* distribution



First, the estate is divided into three portions:

- The intestate had three children who either survived them or died but left surviving children.
- The intestate's fourth child died before their parent and died without leaving any descendants. There is no one to inherit their share and so their share is divided among the other children.
- The intestate's two surviving children each inherit 1/3 of the estate.

Next, the 1/3 portion that would have gone to the intestate's second child (if they were still alive) is divided into three portions:

- The intestate's deceased child had two children who either survived that child or died but left surviving children.
- The intestate's surviving grandchild inherits 1/6th of the estate.

Finally, the 1/6th portion that would have gone to the intestate's deceased grandchild (if they were still alive) is divided into two portions:

- The intestate's grandchild left two surviving children.
- Those two great-grandchildren each inherit 1/12th of the estate.

The other grandchild and great-child whose parents are still alive (the relatives in blue boxes) do not inherit any part of the estate.

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Other publications related to this topic that may interest you include:

- Guide to Getting a Grant of Probate or Administration in Alberta
- Making a Will
- Making a Personal Directive
- Making an Enduring Power of Attorney
- Being a Personal Representative
- Being an Agent
- Being an Attorney Under an Enduring Power of Attorney
- General Powers of Attorney
- *Adult Guardianship and Trusteeship Act*

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