

Laws of Intestacy: What Happens When I Die Without a Will

There are three statutes we will deal with. The first (EPTL § 4-1.1) It lays out who will take if there is no will. The second (EPTL § 4-1.2) deals with children born out of wedlock and what their rights are, and third (EPTL §4-1.4) prohibits parents who have abandoned their children from inheriting from them.

EPTL § 4-1.1 Descent and distribution of a decedent's estate

Without a will, the statute says that my property will pass to my wife if I'm married, and to my parents if I am not. If I'm married and have children, my wife will take the first \$50,000 and will share the rest equally with my children. If I have children and no wife, then all goes to my children. If I have no children and no wife, all goes to my parents, and if they are dead, then to my brothers and sisters, or their children. On and on it goes.

Here are the details:

The property of a decedent not covered by a will shall be distributed as provided in this section. In computing said distribution, debts, administration expenses and reasonable funeral expenses shall be deducted but all estate taxes shall be disregarded, except that nothing contained herein relieves a distributee from contributing to all such taxes the amounts apportioned against him or her under 2-1.8.

Distribution shall then be as follows: (a) If a decedent is survived by:

- (1) A spouse and issue, fifty thousand dollars and one-half of the residue to the spouse, and the balance thereof to the issue by representation.
- (2) A spouse and no issue, the whole to the spouse.
- (3) Issue and no spouse, the whole to the issue, by representation.
- (4) One or both parents, and no spouse and no issue, the whole to the surviving parent or parents.
- (5) Issue of parents, and no spouse, issue or parent, the whole to the issue of the parents, by representation.
- (6) One or more grandparents or the issue of grandparents (as hereinafter defined), and no spouse, issue, parent or issue of parents, one-half to the surviving paternal grandparent or grandparents, or if neither of them survives the decedent, to their issue, by representation, and the other one-half to the surviving maternal grandparent or grandparents, or if neither of them survives the decedent, to their issue, by representation; provided that if the decedent was not survived by a grandparent or grandparents on one side or by the issue of such grandparents, the whole to the surviving grandparent or grandparents on the other side, or if neither of them survives the decedent, to their issue, by representation, in the same manner as the one-half. For the purposes of this subparagraph, issue of grandparents shall not include issue more remote than grandchildren of such grandparents.
- (7) Great-grandchildren of grandparents, and no spouse, issue, parent, issue of parents, grandparent, children of grandparents or grandchildren of grandparents, one-half to the great-grandchildren of the paternal grandparents, per capita, and the other one-half to the great-grandchildren of the maternal grandparents, per capita; provided that if the decedent was not survived by great-grandchildren of grandparents on one side, the whole to the great-grandchildren of grandparents on the other side, in the same manner as the one-half.

(b) For all purposes of this section, decedent's relatives of the half blood shall be treated as if they were relatives of the whole blood.

(c) Distributees of the decedent, conceived before his or her death but born alive thereafter, take as if they were born in his or her lifetime.

(d) The right of an adopted child to take a distributive share and the right of succession to the estate of an adopted child continue as provided in the domestic relations law.

(e) A distributive share passing to a surviving spouse under this section is in lieu of any right of dower to which such spouse may be entitled.

EPTL § 4-1.2: Inheritance by non-marital children

A child born out of wedlock will inherit from his mother just like a child born of a marriage. That same child will inherit from his father if there have been legal proceedings that have declared the man the father of that particular child. The same is true if the child dies. His mother will inherit and his father will too if paternity has been declared.

Here are the details:

(a) For the purposes of this article:

(1) A non-marital child is the legitimate child of his mother so that he and his issue inherit from his mother and from his maternal kindred.

(2) A non-marital child is the legitimate child of his father so that he and his issue inherit from his father and his paternal kindred if:

(A) a court of competent jurisdiction has, during the lifetime of the father, made an order of filiation declaring paternity or the mother and father of the child have executed an acknowledgment of paternity pursuant to section four thousand one hundred thirty-five-b of the public health law, which has been filed with the registrar of the district in which the birth certificate has been filed or;

(B) the father of the child has signed an instrument acknowledging paternity, provided that (i) such instrument is acknowledged or executed or proved in the form required to entitle a deed to be recorded in the presence of one or more witnesses and acknowledged by such witness or witnesses, in either case, before a notary public or other officer authorized to take proof of deeds and

(ii) such instrument is filed within sixty days from the making thereof with the putative father registry established by the state department of social services pursuant to section three hundred seventy-two-c of the social services law, as added by chapter six hundred sixty-five of the laws of nineteen hundred seventy-six and

(iii) the department of social services shall, within seven days of the filing of the instrument, send written notice by registered mail to the mother and other legal guardian of such child, notifying them that an acknowledgment of paternity instrument acknowledged or executed by such father has been duly filed or;

(C) paternity has been established by clear and convincing evidence and the father of the child has openly and notoriously acknowledged the child as his own; or

(D) a blood genetic marker test had been administered to the father which together with other evidence establishes paternity by clear and convincing evidence.

(3) The existence of an agreement obligating the father to support the non-marital child does not qualify such child or his issue to inherit from the father in the absence of an order of filiation made or acknowledgement of paternity as prescribed by subparagraph (2).

(4) A motion for relief from an order of filiation may be made only by the father and a motion for relief from an acknowledgement of paternity may be made by the father, mother or other legal guardian of such child, or the child, provided however, such motion must be made within one year from the entry of such order or from the date of written notice as provided for in subparagraph (2).

(b) If a non-marital child dies, his surviving spouse, issue, mother, maternal kindred, father and paternal kindred inherit and are entitled to letters of administration as if the decedent were legitimate, provided that the father and paternal kindred may inherit or obtain such letters only if the paternity of the non-marital child has been established pursuant to provisions of clause (A) of subparagraph (2) of paragraph (a) or the father has signed an instrument acknowledging paternity and filed the same in accordance with the provisions of clause (B) of subparagraph (2) of paragraph (a) or paternity has been established by clear and convincing evidence and the father of the child has openly and notoriously acknowledged the child as his own.

EPTL § 4-1.4: Disqualification of parent to take intestate share

If there has been abandonment or if the child has been adopted by another, the biological parents won't inherit.

Here are the details:

(a) No distributive share in the estate of a deceased child shall be allowed to a parent if the parent, while such child is under the age of twenty-one years:

(1) has failed or refused to provide for the child or has abandoned such child, whether or not such child dies before having attained the age of twenty-one years, unless the parental relationship and duties are subsequently resumed and continue until the death of the child; or

(2) has been the subject of a proceeding pursuant to section three hundred eighty-four-b of the social services law which: (A) resulted in an order terminating parental rights, or (B) resulted in an order suspending judgment, in which event the surrogate's court shall make a determination disqualifying the parent on the grounds adjudicated by the family court, if the surrogate's court finds, by a preponderance of the evidence, that the parent, during the period of suspension, failed to comply with the family court order to restore the parent-child relationship.

(b) Subject to the provisions of subdivision eight of section two hundred thirteen of the civil practice law and rules, the provisions of subparagraph one of paragraph (a) of this section shall

not apply to a biological parent who places the child for adoption based upon: (1) a fraudulent promise, not kept, to arrange for and complete the adoption of such child, or (2) other fraud or deceit by the person or agency where, before the death of the child, the person or agency fails to arrange for the adoptive placement or petition for the adoption of the child, and fails to comply timely with conditions imposed by the court for the adoption to proceed.

(c) In the event that a parent or spouse is disqualified from taking a distributive share in the estate of a decedent under this section or 5-1.2, the estate of such decedent shall be distributed in accordance with 4-1.1 as though such spouse or parent had predeceased the decedent.