



Missouri

Ag Law Brief

Introduction of Intestacy

A person who does not leave a legally executed Will is said to have died “Intestate.” As a society, we want to have an orderly process to decide what happens to the property of a person after she dies. If that person has left no specific directions, typically in the form of a Will, we want to have a backup system in place to determine what happens to the estate of the deceased person. That backup system takes the form of “Intestacy Statutes”, which may be slightly different from state to state. These statutes lay out a formula which the Probate court uses to distribute the assets of the deceased. The formula is the same for everyone regardless of the size of their Estate.

Intestacy statutes will be applied to the estate of a deceased person when:

1. the deceased left no Will,
2. the deceased Will is rejected by the probate court,
3. the deceased left a Will which does not cover all of the assets of her estate, or
4. the deceased’s spouse believes he can do better using the Intestacy Statutes formula to determine what property he receives from his spouse’s Estate than she left him in her Will.

Typically the takers (people who are allocated a portion of the deceased’s Estate by the probate court) are relatives of the deceased.

When a deceased leaves a valid Will an Executor is appointed to manage the distribution of her assets under the guide of the Probate Court. When the deceased leaves an invalid Will or no Will at all, the Probate Court will appoint an “Administrator” to manage the Estate of the deceased during the Probate process. The Administrator will pay any taxes owed by the Estate and identify any creditors of the Estate prior to the distribution of the assets under the Intestacy Statutes. The Probate process may take months to complete if all goes smoothly.

Intestacy Statutes in Missouri are primarily concerned with making sure that the surviving spouse and children of the deceased receive the appropriate share of the deceased’s Estate. In Missouri, the “appropriate share” is determined by the State Legislature through the application of the Intestacy Statutes and does not necessarily represent a fair or equal share for all parties involved. The deceased had the option to leave a valid Will and designate what would happen to all of the property in her Estate and avoid having the “default rules” found in the Intestacy Statutes be applied to the Estate she left behind. The result may leave some people, especially friends or distant relatives who thought they might be beneficiaries, with no inheritance.



Chapter 474 of the Missouri Statutes is part of the overall probate laws in Missouri and specifies the formula to be used by the probate court specific to the family structure left behind by the deceased. The rules of Intestate descent are formatted to specify the order and relative proportion of the Estate in which assets shall be distributed to family members of the deceased by the Administrator. The hierarchy listed below is used by the Administrator to determine which family members are to receive a portion of the Estate after all taxes and valid debts are paid.

The Administrator will continue to distribute the designated proportion of assets to each family member in order of priority as specified by the Intestacy Statute formula and continue down the list of takers until there are no more assets remaining to distribute.

- I) Where there is a surviving spouse, his allocation is determined by whether the deceased left surviving children (regardless of age);
 - A) where there are no surviving children of the deceased the surviving spouse receives the entire estate;
 - B) where there are surviving children of the deceased and all of those surviving children are also children of the surviving spouse, the surviving spouse receives the first twenty thousand dollars in value of the Estate plus one-half of the balance of the estate;
 - C) where there are surviving children of the deceased and one or more of those surviving children are not children of the surviving spouse, the surviving spouse receives one-half of the estate.
- II) Where there is no surviving spouse or after the allocation to the surviving spouse indicated above part of the estate remains to be distributed;
 - A) where the deceased had children whether living or dead at the time of the deceased's death, the entire remaining Estate is distributed in equal parts to the deceased's children or their descendants;
 - B) where the deceased had no children during her lifetime, or all the children and their descendants died prior to the deceased, the entire remaining Estate is distributed to the deceased's father, mother, brothers and sisters or their descendants in equal parts;
 - C) where the deceased had no children during her lifetime, or all the children and their descendants died prior to the deceased and there are no remaining survivors among the deceased's father, mother, brothers and sisters or their descendants, the entire remaining Estate is distributed in equal parts to the deceased's grandfather, grandmother, uncles, aunts, or their descendants, then to the great-grandfathers, great-grandmothers, or their descendants, in equal parts.
- III) Where there is no surviving spouse or family of the deceased entitled to inherit according to the Intestacy Statutes, partially listed above, the entire remaining estate shall go to the family of the predeceased spouse in the same order of priority as specified above, as long as the predeceased spouse was married to the deceased at the time of the predeceased



Missouri *Ag Law Brief*

spouse's death. In the case where there are more than one predeceased spouse who was married to the deceased at the time of the predeceased spouse's death, the estate is distributed in equal shares to the families of all predeceased spouses.

IV) Where there are no persons entitled to inherit the Estate of the deceased according to the Intestacy Statutes then ownership of the estate reverts (escheats) to the State of Missouri.

The Intestacy Statutes are very thorough and must cover all possible scenarios which might occur in attempting to identify to whom the estate or portion of the estate shall pass. Under the Intestacy system, the value of the Estate determines how far down the list the Administrator can go in distributing assets of the deceased. When the Intestacy Statutes are used to distribute the assets of an Estate, larger estates will allow the assets of the deceased to reach more distant relatives than would a smaller estate. This is a dramatic contrast to what can happen when a person thoughtfully develops and executes a valid Will to express their wishes regarding the distribution of their Estate.

In the case of a Will, virtually anyone, regardless of their familial relationship to the deceased, may receive whatever proportion of the Estate the Testator designates. Nevertheless, when the court has no valid expression of the deceased's wishes our public policy demands that we must have a process for an orderly and fair distribution of the Estate. Intestacy Statutes provide this distribution. It is a "fair" distribution in the sense that the Estate of every person who dies Intestate is treated to the same formula.

The intestacy Statutes are not "fair" to the Beneficiaries in the sense that, for example, a son of the deceased who left home twenty years ago at age eighteen and never contacted his Mother again will receive exactly the same inheritance as the daughter who never left her Mother's bedside.

It is often said that, for those who have not executed a Will, the State has one for them. Because it is drafted to be "one size fits all," it often does not fit at all. A common misconception is that if a spouse dies, anything the spouse owned at death passes to the surviving spouse. This is not what happens under Missouri Intestacy Law and is the very reason why married couples should leave thoughtfully prepared valid Wills.



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