



## The Intestate Succession Act by Doug Paterson, Q.C.

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Another name for this provincial statute could be “Who Gets Your Estate When You Die Without a Will”.

Everyone over 18 years old should have a will, but many do not. Even for some people who have wills, it may turn out their will or part of it is invalid for whatever reason. If you die with no valid will, then you have died “intestate”.

This Act applies to married people and qualified common-law partners. It also applies to legally-recognized adopted people. It also applies to those children conceived before and born alive after the death of the intestate, just as if they were born during the intestate’s lifetime.

Kindred, or blood-relatives, who are half-blood share equally with whole-blooded relatives of the same degree of kinship to the intestate.

So, assuming you have no will, and leave a spouse or common-law-partner, but no children, the entire estate goes to the spouse or partner. If you leave children

and they are all from the same surviving spouse or partner, the spouse or partner still gets all the estate.

If you die leaving a spouse or partner and one or more of your children are not also children of the spouse or partner, then the spouse or partner gets \$50,000.00 or ½ of the estate, whichever is greater and ½ of the remainder with the other half being split by the children equally..

If spouses are separated at the time one of them dies with no will, and if a court order or an agreement has divided their marital assets between them, then the surviving spouse is assumed to have predeceased the intestate, i.e. gets zero. The same process occurs under the same situation for common-law partners if they were registered as a dissolved relationship or if 3 years had passed since their separation.

If both a spouse and one or more common-law-partners survived an intestate, priorities generally are established by who was the most recent and going

backwards in seniority from there, excluding any who have benefited from a court order or an agreement by having received marital property.

If an intestate has no spouse, no common-law-partner and no children, then the estate goes to the parents of the intestate equally or to the survivor of them.

If there are no parents at this stage, the estate goes to the surviving brothers and sisters of the intestate, or applicable step-siblings.