

Intestate Succession in California

California has a series of laws to pass your property on to your relatives.

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Which Assets Pass by Intestate Succession

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
- vehicles held by transfer-on-death registration, or
- property you own with someone else in joint tenancy or as community property with the right of survivorship.

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

Under intestate succession, who gets what depends on who your closest relatives are when you die. Here's a quick overview:

If you die with:	here's what happens:
<ul style="list-style-type: none">• children but no spouse	<ul style="list-style-type: none">• children inherit everything
<ul style="list-style-type: none">• spouse but no children, parents, siblings, or nieces or nephews	<ul style="list-style-type: none">• spouse inherits everything

If you die with:	here's what happens:
<ul style="list-style-type: none"> • parents but no children, spouse, or siblings 	<ul style="list-style-type: none"> • parents inherit everything
<ul style="list-style-type: none"> • siblings but no children, spouse, or parents 	<ul style="list-style-type: none"> • siblings inherit everything
<ul style="list-style-type: none"> • a spouse and one child or grandchild 	<ul style="list-style-type: none"> • spouse inherits all of your community property and 1/2 of your separate property
<ul style="list-style-type: none"> • a spouse and two or more children 	<ul style="list-style-type: none"> • spouse inherits all of your community property and 1/3 of your separate property • children inherit 2/3 of your separate property
<ul style="list-style-type: none"> • a spouse and one child and one or more grandchildren from a deceased child 	<ul style="list-style-type: none"> • spouse inherits all of your community property and 1/3 of your separate property • children inherit 2/3 of your separate property
<ul style="list-style-type: none"> • a spouse and two or more grandchildren from a deceased child 	<ul style="list-style-type: none"> • spouse inherits and 1/3 of your separate property • children inherit 2/3 of your separate property
<ul style="list-style-type: none"> • a spouse and parents 	<ul style="list-style-type: none"> • spouse inherits all of your community property and 1/2 of your separate property • parents inherit 1/2 of your separate property
<ul style="list-style-type: none"> • a spouse and siblings, but no parents 	<ul style="list-style-type: none"> • spouse inherits all of your community property and 1/2 of your separate property • siblings inherit 1/2 of your separate pr

The Spouse's Share in California

In California, if you are married and you die without a will, what your spouse gets depends in part on how the two of you owned your property – as separate property or community property. Generally, community property is property acquired while you were married, and separate property is property you acquired before marriage. There are a couple of big exceptions: Gifts and inheritances given to one spouse are separate property, even if acquired during marriage.

Your spouse will inherit your half of the community property. If you have separate property (many spouses mix everything together and don't have any separate property), your spouse will inherit all or a portion of it. The size of your spouse's share of your separate property depends on whether or not you have living parents, children, siblings, or nieces or nephews. If you do, they and your spouse will share your separate property.

If you and your spouse are legally separated -- but not yet divorced -- when you die without a will, your spouse will not be entitled to your property. If you're concerned about this area of the law, see an experienced attorney for help.

In California, the rules for married people also apply to registered domestic partners.

Children's Shares in California

If you die without a will in California, 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, the state of California 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. However, a foster child or stepchild can inherit if he or she can prove that: 1) your relationship with the child began while the child was a minor and continued throughout your lifetimes, *and* 2) you would have adopted the child if it had been legally possible. ([Cal. Prob. Code § 6454.](#))

- **Children placed for adoption.** Children you placed for adoption and who were legally adopted by another family will not receive a share. However, if your biological children were adopted by your spouse, that won't affect their intestate inheritance. ([Cal. Prob. Code § 6451.](#))
- **Posthumous children.** Children conceived by you but not born before your death will receive a share. A child conceived with your genetic material within two years of your death will also receive a share if you left written permission for the material to be used. ([Cal. Prob. Code § 249.5.](#))
- **Children born outside of marriage.** If you were not married or in a registered domestic partnership with your children's mother when she gave birth to them, they may receive a share of your estate if they can prove that you acknowledged them as your children and contributed to their care and support.
- **Children born during your marriage.** Any child born to your wife or registered domestic partner during your marriage or partnership is assumed to be your child and will receive a share of your estate.
- **Grandchildren.** A grandchild will receive a share only if that grandchild's parent (your son or daughter) is not alive to receive his or her share.

In case you want to read the law, [Cal. Prob. Code §§ 6450–6455](#) covers parent-child relationships.

This can be a tricky area of the law, so if 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 California Intestate Succession Rules

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

- **Survivorship period.** To inherit under California's intestate succession statutes, a person must outlive you by 120 hours. So if you and your brother are in a car accident and he dies a few hours after you do, his estate would not receive any of your property. ([Cal. Prob. Code § 6403.](#))
- **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. ([Cal. Prob. Code § 6406.](#))
- **Posthumous relatives.** Relatives conceived before--but born after--you die inherit as if they had been born while you were alive. ([Cal. Prob. Code § 6407.](#))
- **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. ([Cal. Prob. Code § 6411.](#))
- **Advancement rule.** If you gave a relative a gift during your lifetime, this gift is deducted from the relative's share only if you made a writing at the time saying this or the relative admits this in writing.
- **Slayer rule.** Someone who "feloniously and intentionally" kills you will not receive a share of your property. ([California Probate Code § 250.](#))