INTESTATE SUCCESSION IN CALIFORNIA

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When a person dies without a will, there are specific laws in each state that address the disposition of that person’s assets to their spouse and/or heirs. These laws include laws of descent and distribution and marital rights in the estate, which apply to a surviving spouse. Collectively, these laws are referred to as the laws of intestate succession.

Generally speaking, if you die without a will in California, your assets will go to your closest relatives. If you die with surviving children, but no spouse, parents or siblings, your children will inherit everything in your estate. If you die with a surviving spouse, but no children, parents or siblings, then your spouse inherits everything.
Your parents are next in line, meaning, if you have no surviving spouse, children or siblings, they will inherit. The same is true, if only siblings survive you.

If you leave a spouse and children behind, your spouse inherits all of your community property and one-half or one-third of your separate property. Your children inherit one-half or two-thirds of your separate property. If your spouse survives you, but you have no children, and your parents are still alive, your spouse inherits all of your community property and one-half of your separate property; while your parents inherit the remaining half of your separate property. The same division would apply if only your spouse and siblings survive you.

There are a few caveats to the intestate succession laws.

THE SPOUSE’S SHARE

In California, if you are married and you die without a will, the share your spouse receives depends on whether you owned your property as separate property or community property. Community property is the property that is acquired while a couple is married. On the other hand, separate property is the property each individual acquired before marriage. There are two exceptions: gifts and inheritances which are given to one spouse are considered separate property, even if acquired during marriage.
If you and your spouse are not divorced, but legally separated, at the time of your death, you your spouse will not be entitled to any of your property. In California, the rules for married couples also apply to registered domestic partners.

**CHILDREN’S SHARES**

The size of each child’s intestate share of your estate depends on how many children survive you, and whether or not you have a surviving spouse. In order for children to inherit, in California, they must be a legal child, which includes biological children, adopted children, and children conceived by you, but not born before your death (posthumous children).

**“CHILDREN” WHO DO NOT INHERIT AUTOMATICALLY**

Foster children and stepchildren, whom you never legally adopted, do not automatically receive a share. However, a foster child or stepchild can inherit if he or she can prove that:

- your relationship with the child began while the child was a minor and continued throughout your lifetimes, and
- you would have adopted the child if it had been legally possible.

A child who has been placed for adoption and legally adopted by another family will not receive a share of your estate. This does not include biological children.
adopted by your spouse. Children born outside of marriage, may receive a share if they prove that you acknowledged them and contributed to their support.

OTHER CALIFORNIA INTESTATE SUCCESSION RULES

California has what is known as a “survivorship period,” which means a person must outlive you by 120 hours in order to inherit. “Half” relatives inherit from your estate as if they were “whole.” Relatives who are conceived before your death, but born after, still inherit as if they had been born while you were alive. Citizenship or immigration status does not affect rights of inheritance. Finally,
California’s “slayer rule” says that someone who “feloniously and intentionally” kills you will not receive a share of your property.

If you have questions regarding intestate succession, or any other estate planning needs, please contact the Schomer Law Group either online or by calling us at (310) 337-7696.
About the Author

Scott P. Schomer is a graduate of Boston University School of Law and is a frequent lecturer on estate planning and elder law issues, having appeared on local and national television discussing the importance of estate planning. Scott has an extensive litigation background and has over the years obtained in excess of twenty five million dollars in judgments and verdicts for his clients. Scott is a member of the Probate Volunteer Panel and has been appointed by the Los Angeles Superior Court to represent numerous parties in contested proceedings in the probate court. Scott has also served as Judge Pro Tempore of the Los Angeles Municipal Court and also been appointed by the court as an expert in probate matters. Because of his extensive experience, Scott brings a unique perspective to helping protect his clients.

SCHOMER LAW GROUP

Schomer Law Group is a professional law corporation that specializes in elder law, probate, wills, trusts and conservatorships. We counsel clients on the unique legal issues relating to advancing age. Whenever possible, we prefer to help clients plan for the future, avoid probate, minimize taxes and solidify their legacy. We also help clients plan for possible incapacity and long-term care. We help our clients deal with issues of aging with independence and dignity. In addition to estate planning, our firm has considerable experience helping victims of elder abuse. Our firm has aggressively pursued remedies and recovered assets belonging to our elderly clients where unscrupulous individuals have taken advantage of the elderly because of diminished capacity or other impairments.

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