



Who gets What? Understanding Intestate Succession & How to Read a Will

Introduction to Estate Administration

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Understanding Intestate Succession

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Agenda

- What is Intestate Succession?
- Where can you find the Intestate Succession laws?
- What is the purpose of Intestate Succession?
- Who gets what!
- Per Capita versus Per Stirpes.
- How is the Clerk involved?

What is Intestate Succession?

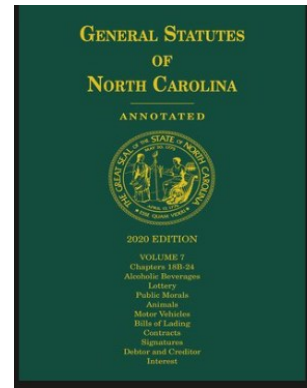
- Intestate – To die without a will.
- Intestate Succession – the property of a person who died without a will is disposed of according to the laws of descent and distribution.



Where can you find the Intestate Succession laws?

- Chapter 29 of the North Carolina Statutes became law in 1959 and is known as the Intestate Succession Act.

G.S. 29-1.



What is the purpose of Intestate Succession?

Taken as a whole, the Intestate Succession Act conveys an intent by the Legislature to write a reasonable will for those residents who have not done so.

Newlin v Gill, 293 N.C. 348, 352 (1977)

Where can you find the Intestate Succession laws?

- Chapter 29 includes eight articles:
 - Article 1 General Provisions
 - Article 2 Shares of Persons Who Take upon Intestacy
 - Article 3 Distribution among Classes
 - Article 4 Adopted Children
 - Article 5 Legitimated Children
 - Article 6 Children Born Out of Wedlock
 - Article 7 Advancements
 - Article 8 Election to Take Life Estate in Lieu of Intestate Share

What does Intestate Succession not say?

- If a person gave something to the deceased while they were living – then that person gets that item back after they have died.
- The spouse gets everything!
- The deceased told persons what they get after the death.
- The state gets everything – or a part.
- The administration of an estate takes longer when there is no will.
- The estate is more complicated than when a person dies with a will.

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Article 1 General Provisions

- Key Points
 - Definitions
 - How to figure relationships and limitations
 - Partial intestacy
 - When to Escheat
 - Estate Proceedings

From the Inbox



From the Inbox

- Man dies testate
- Will -- Article 1 devises all tangible personal property to spouse, if she survives.
- Will -- Article 2 devises all rest remainder and residue of estate to spouse, if she survives.
- Will – Article 2 further states:
 - “If there is a complete failure of takers under the preceding paragraphs of this article, the property undisposed of shall be divided equally between my Brother and Charity X.”

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- Will -- Article 2 further states:
 - If there is a complete failure of takers under the preceding paragraphs of this article, the property undisposed of shall be divided equally between my Brother and Charity X.
- At the time of death:
 - spouse predeceased
 - brother predeceased
 - charity is no longer in existence
- Who receives distributions from the estate?

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Article 4 Adopted Children Article 5 Legitimated Children

- G.S. 29-17 Succession by, through and from adopted children.
 - Chapter 48 or in accordance with the applicable law of any other jurisdiction.
- G.S. 29-18 Succession by, through and from legitimated children.
 - G.S. 49-10 or 49-12, or in accordance with the applicable law of any other jurisdiction.

Children Born out of Wedlock

- G.S. 29-19 Succession by, through and from children born out of wedlock.
 - Date of Death prior to 12/1/2025
 - Date of Death on or after 12/1/2025

On the Civil Side

A UNC School of Government Blog

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Who Gets What!

- G.S. 29-14 Share of surviving spouse
 - Real property
 - Personal Property
 - Equitable Distribution effect
- G.S. 29-15 Shares of others than surviving spouse or when there is no surviving spouse
 - If, if, if

Who Gets What!

- G.S. 29-14 provides what amount a surviving spouse receives.
- G.S. 29-15 provides who gets what is left after a surviving spouse receives their statutory amounts or when there is no surviving spouse.
- **G.S. 29-16** Distribution among all those “others”.
 - How to do the math.
- G.S. 29-2(5) – Net Estate is defined as the estate of a decedent, exclusive of family allowances, costs of administration, and all lawful claims against the estate.

Ascendants versus Descendants

- Heir - any person entitled to take real or personal property upon intestacy under the provisions of this Chapter.
G.S. 29-2(3)
- Lineal descendants - all children of such person and successive generations of children of such children.
G.S. 29-2(4).
- Ascendants – persons with whom one is related in the ascending line; one’s parents, grandparents, great-grandparents, etc.
Black’s Law Dictionary, 6th Edition, 75.

Yes to Surviving Spouse

- But who else?
 - One surviving child or descendants of one predeceased child
 - Two or more surviving children and/or descendants of deceased children
 - No surviving children (or descendants) and one or both surviving parents
 - No surviving children (or descendants) and no surviving parents

Yes to Surviving Spouse



SS + One Child (or Descendants of One Child)

SS Gets	{	Real Property • $\frac{1}{2}$ of undivided interest of all real property	Personal Property • First \$60K* plus $\frac{1}{2}$ remaining balance
Child or Descendants Get	{	Real Property • $\frac{1}{2}$ of undivided interest of all real property	Personal Property • $\frac{1}{2}$ remaining balance after SS share

* For decedents dying on or after January 1, 2013; before January 1, 2013, amount is \$30K

SS + Two or More Children (or Descendants)

SS Gets	{	Real Property • $\frac{1}{3}$ of undivided interest of all real property	Personal Property • First \$60K* plus $\frac{1}{3}$ remaining balance
Child or Descendants Get	{	Real Property • $\frac{2}{3}$ of undivided interest of all real property	Personal Property • $\frac{2}{3}$ remaining balance after SS share

* For decedents dying on or after January 1, 2013; before January 1, 2013, amount is \$30K

SS + Parents (No lineal descendants)

SS Get	{	Real Property • 1/2 of undivided interest of all real property	Personal Property • First \$100K* plus 1/2 remaining balance
Parents Get	{	Real Property • 1/2 of undivided interest of all real property	Personal Property • 1/2 remaining balance after SS share

* For decedents dying on or after January 1, 2013; before January 1, 2013, amount is \$50K

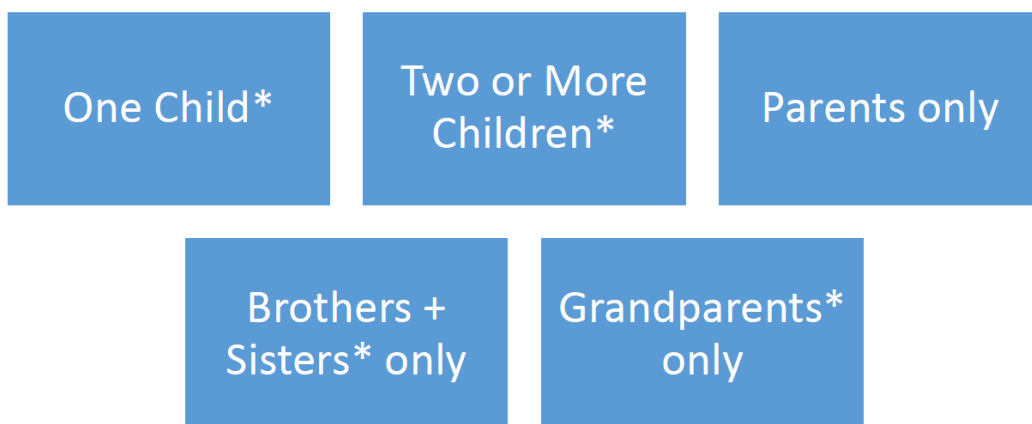
Surviving Spouse Only (no children (or descendants) & no parents)

SS Gets	{	Real Property • All	Personal Property • All	Balance • None

No to Surviving Spouse

- But who else?
 - One surviving child or descendants of one predeceased child
 - Two or more surviving children and/or descendants of deceased children
 - No surviving children (or descendants) and one or both surviving parents
 - No surviving children (or descendants), no surviving parents, surviving siblings (or descendants)
 - No surviving children (or descendants), nor surviving parents, no surviving siblings (or descendants), surviving grandparents (or descendants)

Unmarried at Death (Includes Widow(er))



** Includes lineal descendants of the group*

One Child or Descendants of One Child

- No surviving spouse.
- If only child is living – that child inherits the entire net estate.
- If only child is deceased with only one descendant – that descendant inherits the entire net estate.
- If only child is deceased with 2 or more living descendants – then they inherit per **G.S. 29-16**.

G.S. 29-15(1)

Two or more Children (and/or Descendants)

- No surviving spouse.
- Two or more living children,
OR
- One living child and descendants from one or more deceased children,
OR
- Lineal descendants from two or more deceased children
- Then the living children or descendants inherit per **G.S. 29-16**.

G.S. 29-15(2)

No Children (or Descendants) One or Both Living Parents

- No surviving spouse.
- No children or descendants.
- Both parents are living – they inherit the net estate.
- Only one parent is living – they inherit the net estate.

G.S. 29-15(3)

No Surviving Children (or Descendants) No Surviving Parents Surviving Siblings (and/or Descendants)

- No surviving spouse.
- No surviving children or descendants.
- No surviving parents.
- Brothers and Sisters and/or descendants from deceased brothers and sisters inherit per **G.S. 29-16**.

G.S. 29-15(4)

No Surviving Children (or Descendants)
No Surviving Parents
No Surviving Siblings (or Descendants)
Paternal Grandparents (and/or Descendants)
Maternal Grandparents (and/or Descendants)

- No surviving spouse.
- No surviving children or descendants.
- No surviving parents.
- No siblings or descendants.
- Surviving paternal grandparents or descendants.
- Surviving maternal grandparents or descendants.

Paternal Grandparents (and/or Descendants)
Maternal Grandparents (and/or Descendants)

- Paternal Grandparents – each inherits $\frac{1}{2}$ of the net estate or the survivor inherits the entire $\frac{1}{2}$.
 - If both are deceased, then paternal aunts and uncles or their descendants inherit the $\frac{1}{2}$ of the net estate.
- Maternal Grandparents – each inherits $\frac{1}{2}$ of the net estate or the survivor inherits the entire $\frac{1}{2}$.
 - If both are deceased, then maternal aunts and uncles or their descendants inherit the $\frac{1}{2}$ of the net estate.
- If none on one side, then the other side inherits the whole net estate.

G.S. 29-15(5)

Per Capita versus Per Stirpes

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How to do the Math – **G.S. 29-16** Distribution among Classes

- Divide the number of the surviving children plus the number of deceased children who have left lineal descendants= the share of the surviving children.
 - Balance then to be distributed to the next generation level.
- Example – 8 total children but only 4 surviving children plus 4 deceased children who have descendants – the 4 surviving children each receive $\frac{1}{8}$.
- Example 8 total children, but only 4 surviving children plus 2 deceased children who have descendants, 2 deceased children did not have any descendants – the 4 surviving children each receive $\frac{1}{6}$.

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How to do the Math – **G.S. 29-16** Distribution among Classes

- Same calculation for each generation (how many living plus any predeceased with descendants)
- Children
 - Grandchildren
 - Great-Grandchildren
 - Great-Great Grandchildren
- Brothers and Sisters
 - Nephews and Nieces
 - Grandnephews and Grandnieces
 - Great- Grandnephews and Great-Grandnieces

How to do the Math – **G.S. 29-16** Distribution among Classes

- Uncles and Aunts
 - Children of Uncles and Aunts
 - Grandchildren of Uncles and Aunts

Per Stirpes versus Per Capita

- Per Capita** -- at each generation is the system of distribution of an intestate decedent's assets that denotes shares being divided equally among all individuals in the same generation
- Intestate OR
- IF will does not give directions.
 - North Carolina is a per capita state.
- Per Stirpes** -- is the system of distribution of an intestate decedent's assets that denotes shares being divided proportionally between heirs according to their deceased ancestor's share.
- IF law provides OR
- IF will so directs – may or may not use the wording of “per stirpes”

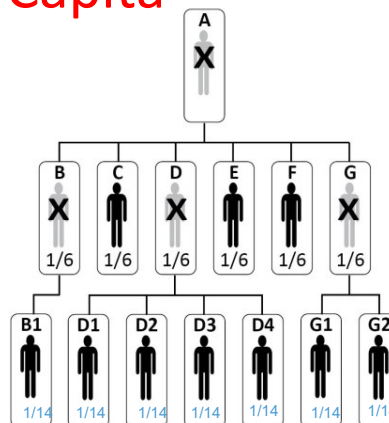
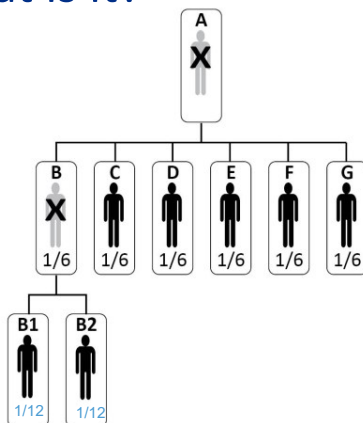
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What is it?

Per Capita



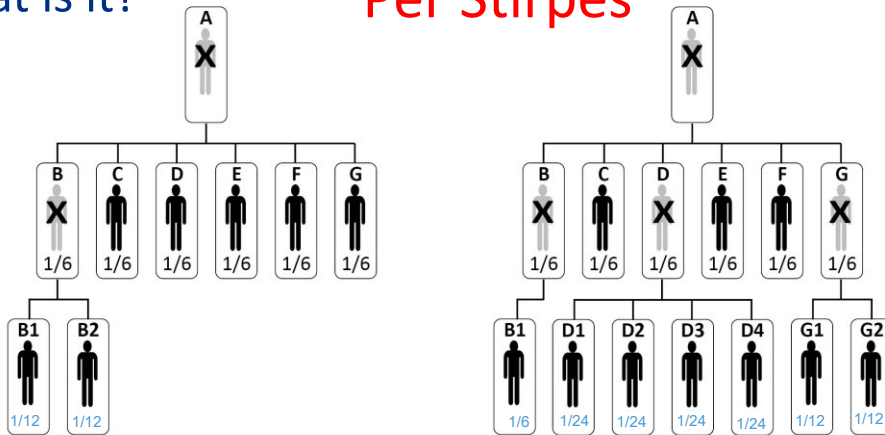
divided equally among all
individuals in the same
generation

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What is it?

Per Stirpes



divided proportionally between heirs according to their deceased ancestor's share.

Per capita versus per stirpes

- **Per Capita --**
 - Always for intestate estates.
 - Testate estates – when will does not give separate directions.
- **Per Stirpes –**
 - Only if will so directs – may or may not use the wording of “per stirpes”



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CLERKS OF SUPERIOR COURT Ex-Officio Judge of Probate

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How is the clerk involved?

- PR is qualifying – who are all the heirs
- Bond?
- Unnamed heir walks in your door
- Estate Proceedings before the clerk
- Accounting

How to Read a Will

What is a Will?

- Definition:

“A document by which a person directs his or her estate to be distributed upon death.”

BLACKS LAW DICTIONARY [7th Edition]

- Wills can be handwritten or typewritten, simple or complex.

Questions Typically Answered by a Will

1. Who gets what?
2. Who's in charge?

Anatomy of a Will

All wills are different, but many of them share some common characteristics:

- Introduction
- Specific devises
 - Tangible personal property (TPP)
 - Money
 - Real Property
- **Residue***
- Appointment of Fiduciaries
- Powers

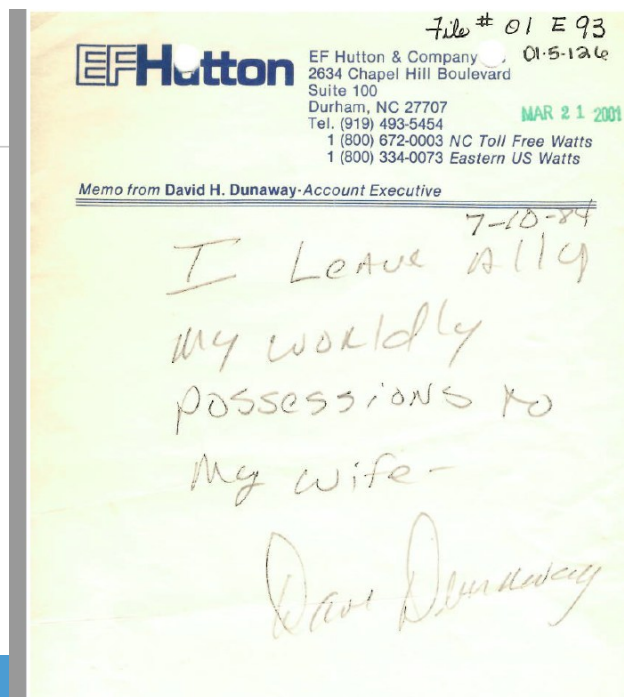
Secondary Questions

- What kinds of powers do the folks in charge have?
 - Reference General Statutes,
 - List their own powers, and/or
 - Silent
- Are things given with special rules?
 - Trust
 - Power of appointment
- Are devises divided by category?
 - Specific devises, type of property?

Examples

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Simple



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More Examples

- Mr. Liles
- Ms. Wells
- Mrs. Shealy

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II Disposition of Estate

A. ***Gift of Tangible Personal Property.*** All my tangible personal property which, in the opinion of my Executor, was not held by me solely for investment purposes, including, but not limited to, my automobiles, household furniture and furnishings, clothing, jewelry, collectibles and personal effects, shall be disposed of as follows:

1. I direct my Executor, in my Executor's discretion, either to (i) divide any or all of such tangible personal property, or the proceeds of its sale, among my children who survive me in such manner as my Executor may determine or (ii) add any or all of such property, or the proceeds of its sale, to my residuary estate. In making any division of such property among my children, my Executor shall consider but shall not be bound by their respective wishes.

2. The costs of safeguarding, insuring, packing, storing and delivering my tangible personal property to any beneficiary under this Paragraph shall be paid from my estate as expenses of administration.

3. I may leave a writing which, although not a part of my will, expresses my desires concerning the disposition of my tangible personal property. I request, that my wishes as set forth in any such writing be observed.

B. ***Gift of Residuary Estate.*** I give my residuary estate, being all of my real and personal property, wherever located, not otherwise effectively disposed of, but excluding any property over which I may have a power of appointment, to be disposed of as follows:

1. I give my residuary estate to the Trustee named below to be disposed of in accordance with the terms of the trust created under this Will.

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Final Example

- Ms. Millard

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