

If you die without a will in West Virginia, your assets will go to your closest relatives under state "intestate succession" laws. Here are some details about how intestate succession works in West Virginia.

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, or
- property you own with someone else in joint tenancy.

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

Who Gets What in West Virginia?

Under intestate succession, who gets what depends on whether or not you have living children, parents, or other close relatives when you die. Here's a quick overview:

If you die with:

- children but no spouse
- spouse but no descendants
- spouse and descendants from you and that spouse, and the spouse has no other descendants
- spouse and descendants from you and that spouse, and the spouse has descendants from another relationship
- spouse and descendants from you and someone other than that spouse

here's what happens:

- children inherit everything
- spouse inherits everything
- spouse inherits everything
- spouse inherits 3/5 of your intestate property
- your descendants inherit 2/5 of your intestate property
- spouse inherits 1/2 of your intestate property
- your descendants inherit 1/2 of your intestate property

If you die with:

- parents but no spouse or descendants
- siblings but no spouse, descendants, or parents

here's what happens:

- parents inherit everything
- siblings inherit everything

The Spouse's Share in West Virginia

In West Virginia, if you are married and you die without a will, what your spouse gets depends on whether or not you have living descendants – children, grandchildren, or great-grandchildren. If you don't, then your spouse inherits all of your intestate property. If you do, they and your spouse will share your intestate property as follows:

If you die with children or other descendants from you and the surviving spouse, and your surviving spouse has no descendants from previous relationships. Your surviving spouse inherits everything.

If you die with children or other descendants from you and the surviving spouse, and your surviving spouse has descendants from previous relationships. Your surviving spouse inherits 3/5 of your intestate property and your descendants inherit the rest.

Example: Bill is married to Karen, and they have two grown children. Karen also has a son from a previous marriage. Bill and Karen own a large bank account in joint tenancy, and Bill took out a life insurance policy naming Karen as the beneficiary. When Bill dies, Karen receives the life insurance policy proceeds and inherits the bank account outright. Bill also owns \$250,000 worth of other property that would have passed under a will, so Karen inherits \$150,000 worth of that property. The remaining \$100,000 goes to Bill's and Karen's two children.

If you die with descendants who are not the descendants of your surviving spouse. Your spouse inherits half of your intestate property and your descendants inherit the other half.

Example: Barrett is married to Jed and also has a 12-year-old daughter from a previous marriage. Barrett owns a house in joint tenancy with Jed, plus \$200,000 worth of additional, separate property that would have passed under a will if Barrett had made one. When Barrett dies, Jed inherits the house outright and \$100,000 worth of Barrett's property. Barrett's daughter inherits the remaining \$100,000 share of Barrett's property.

Children's Shares in West Virginia

If you die without a will in West Virginia, your children will receive an "intestate share" of your property. The size of each child's share depends on how many children you have, whether or not you are married, and whether you or your spouse have children from another relationship. (See the table above.)

For children to inherit from you under the laws of intestacy, West Virginia 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. (West Virginia Code § 48-22-703.)
- **Foster children and stepchildren.** Foster children and stepchildren you never legally adopted will not automatically receive a share.
- **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. (West Virginia Code § 48-22-703.)
- **Posthumous children.** Children conceived by you but not born before your death will receive a share. (West Virginia Code § 42-1-8.)
- **Children born outside of marriage.** If you were not married to your children's mother when she gave birth to them, they will receive a share of your estate if (1) you married the mother after your children's birth, (2) you participated in a marriage ceremony that turned out to be void, (3) you acknowledge your paternity, or (4) your paternity is established during or after your life according to the rules of West Virginia law. The law places limits on the period of time after your death during which someone can claim to be your child and request a share of your estate. (West Virginia Code §§ 42-1-5, 42-1-6, and 42-1-7.)
- **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. (West Virginia Code § 42-1-3d.)

This can be a tricky area of the law, so if you have questions about your relationship to your parent or child, get help from an experienced attorney. If you want to read the laws yourself, you will find a link to the West Virginia Code at the end of this article.

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, grandchildren, parents, grandparents, siblings, nieces, nephews, aunts, uncles, or cousins.

Other West Virginia Intestate Succession Rules

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

- **Survivorship period.** To inherit under West Virginia'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. (West Virginia Code § 42-1-3b.)
- **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. (West Virginia Code § 42-1-3e.)

- **Posthumous relatives.** Relatives conceived before -- but born after -- you die inherit as if they had been born while you were alive, as long as they survive at least 120 hours after birth. (West Virginia Code § 42-1-3f.)
- **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. (West Virginia Code § 42-1-4.)
- **Advancements.** If you give property to a relative during your lifetime, the value of this property is subtracted from your relative's share only if you wrote this down at the time of making the gift or your relatives states this in writing. (West Virginia Code § 42-1-3g.)