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# CALIFORNIA INTESTATE SUCCESSION

FOR THE CONVENIENCE OF OUR CLIENTS, WE BELOW REPRODUCE KEY PORTIONS OF THE STATE OF CALIFORNIA PROBATE CODE REGARDING INTESTATE SUCCESSION. SEE OUR ARTICLE FOR AN [OVERVIEW OF INTESTACY](#).

### **DIVISION 6. WILLS AND INTESTATE SUCCESSION [6100 - 6806]**

*( Division 6 enacted by Stats. 1990, Ch. 79. )*

### **PART 2. INTESTATE SUCCESSION [6400 - 6455]**

*( Part 2 enacted by Stats. 1990, Ch. 79. )*

### **CHAPTER 1. Intestate Succession Generally [6400 - 6414]**

*( Heading of Chapter 1 added by Stats. 1993, Ch. 529, Sec. 2. )*

#### **6400.**

Any part of the estate of a decedent not effectively disposed of by will passes to the decedent's heirs as prescribed in this part.

*(Enacted by Stats. 1990, Ch. 79.)*

#### **6401.**

(a) As to community property, the intestate share of the surviving spouse is the one-half of the community property that belongs to the decedent under Section 100.

(b) As to quasi-community property, the intestate share of the surviving spouse is the one-half of the quasi-community property that belongs to the decedent under Section 101.

(c) As to separate property, the intestate share of the surviving spouse is as follows:

(1) The entire intestate estate if the decedent did not leave any surviving issue, parent, brother, sister, or issue of a deceased brother or sister.

(2) One-half of the intestate estate in the following cases:

(A) Where the decedent leaves only one child or the issue of one deceased child.

(B) Where the decedent leaves no issue, but leaves a parent or parents or their issue or the issue of either of them.

(3) One-third of the intestate estate in the following cases:

(A) Where the decedent leaves more than one child.

(B) Where the decedent leaves one child and the issue of one or more deceased children.

(C) Where the decedent leaves issue of two or more deceased children.

*(Amended by Stats. 2014, Ch. 913, Sec. 32. (AB 2747) Effective January 1, 2015.)*

## **6402.**

Except as provided in Section 6402.5, the part of the intestate estate not passing to the surviving spouse, under Section 6401, or the entire intestate estate if there is no surviving spouse, passes as follows:

(a) To the issue of the decedent, the issue taking equally if they are all of the same degree of kinship to the decedent, but if of unequal degree those of more remote degree take in the manner provided in Section 240.

(b) If there is no surviving issue, to the decedent's parent or parents equally.

(c) If there is no surviving issue or parent, to the issue of the parents or either of them, the issue taking equally if they are all of the same degree of kinship to the decedent, but if of unequal degree those of more remote degree take in the manner provided in Section 240.

(d) If there is no surviving issue, parent or issue of a parent, but the decedent is survived by one or more grandparents or issue of grandparents, to the grandparent or grandparents equally, or to the issue of those grandparents if there is no surviving grandparent, the issue taking equally if they are all of the same degree of kinship to the decedent, but if of unequal degree those of more remote degree take in the manner provided in Section 240.

(e) If there is no surviving issue, parent or issue of a parent, grandparent or issue of a grandparent, but the decedent is survived by the issue of a predeceased spouse, to that issue, the issue taking equally if they are all of the same degree of kinship to the predeceased spouse, but if of unequal degree those of more remote degree take in the manner provided in Section 240.

(f) If there is no surviving issue, parent or issue of a parent, grandparent or issue of a grandparent, or issue of a predeceased spouse, but the decedent is survived by

next of kin, to the next of kin in equal degree, but where there are two or more collateral kindred in equal degree who claim through different ancestors, those who claim through the nearest ancestor are preferred to those claiming through an ancestor more remote.

(g) If there is no surviving next of kin of the decedent and no surviving issue of a predeceased spouse of the decedent, but the decedent is survived by the parents of a predeceased spouse or the issue of those parents, to the parent or parents equally, or to the issue of those parents if both are deceased, the issue taking equally if they are all of the same degree of kinship to the predeceased spouse, but if of unequal degree those of more remote degree take in the manner provided in Section 240.

*(Amended by Stats. 2014, Ch. 913, Sec. 32.5. (AB 2747) Effective January 1, 2015.)*

### **6402.5.**

(a) For purposes of distributing real property under this section if the decedent had a predeceased spouse who died not more than 15 years before the decedent and there is no surviving spouse or issue of the decedent, the portion of the decedent's estate attributable to the decedent's predeceased spouse passes as follows:

(1) If the decedent is survived by issue of the predeceased spouse, to the surviving issue of the predeceased spouse; if they are all of the same degree of kinship to the predeceased spouse they take equally, but if of unequal degree those of more remote degree take in the manner provided in Section 240.

(2) If there is no surviving issue of the predeceased spouse but the decedent is survived by a parent or parents of the predeceased spouse, to the predeceased spouse's surviving parent or parents equally.

(3) If there is no surviving issue or parent of the predeceased spouse but the decedent is survived by issue of a parent of the predeceased spouse, to the surviving issue of the parents of the predeceased spouse or either of them, the issue taking equally if they are all of the same degree of kinship to the predeceased spouse, but if of unequal degree those of more remote degree take in the manner provided in Section 240.

(4) If the decedent is not survived by issue, parent, or issue of a parent of the predeceased spouse, to the next of kin of the decedent in the manner provided in Section 6402.

(5) If the portion of the decedent's estate attributable to the decedent's predeceased spouse would otherwise escheat to the state because there is no kin of the decedent to take under Section 6402, the portion of the decedent's estate attributable to the predeceased spouse passes to the next of kin of the predeceased spouse who shall take in the same manner as the next of kin of the decedent take under Section 6402.

(b) For purposes of distributing personal property under this section if the decedent had a predeceased spouse who died not more than five years before the decedent, and there is no surviving spouse or issue of the decedent, the portion of the decedent's estate attributable to the decedent's predeceased spouse passes as follows:

(1) If the decedent is survived by issue of the predeceased spouse, to the surviving issue of the predeceased spouse; if they are all of the same degree of kinship to the predeceased spouse they take equally, but if of unequal degree those of more remote degree take in the manner provided in Section 240.

(2) If there is no surviving issue of the predeceased spouse but the decedent is survived by a parent or parents of the predeceased spouse, to the predeceased spouse's surviving parent or parents equally.

(3) If there is no surviving issue or parent of the predeceased spouse but the decedent is survived by issue of a parent of the predeceased spouse, to the surviving issue of the parents of the predeceased spouse or either of them, the issue taking equally if they are all of the same degree of kinship to the predeceased spouse, but if of unequal degree those of more remote degree take in the manner provided in Section 240.

(4) If the decedent is not survived by issue, parent, or issue of a parent of the predeceased spouse, to the next of kin of the decedent in the manner provided in Section 6402.

(5) If the portion of the decedent's estate attributable to the decedent's predeceased spouse would otherwise escheat to the state because there is no kin of the decedent to take under Section 6402, the portion of the decedent's estate attributable to the predeceased spouse passes to the next of kin of the predeceased spouse who shall take in the same manner as the next of kin of the decedent take under Section 6402.

(c) For purposes of disposing of personal property under subdivision (b), the claimant heir bears the burden of proof to show the exact personal property to be disposed of to the heir.

(d) For purposes of providing notice under any provision of this code with respect to an estate that may include personal property subject to distribution under subdivision (b), if the aggregate fair market value of tangible and intangible personal property with a written record of title or ownership in the estate is believed in good faith by the petitioning party to be less than ten thousand dollars (\$10,000), the petitioning party need not give notice to the issue or next of kin of the predeceased spouse. If the personal property is subsequently determined to have an aggregate fair market value in excess of ten thousand dollars (\$10,000), notice shall be given to the issue or next of kin of the predeceased spouse as provided by law.

(e) For the purposes of disposing of property pursuant to subdivision (b), "personal property" means that personal property in which there is a written record of title or

ownership and the value of which in the aggregate is ten thousand dollars (\$10,000) or more.

(f) For the purposes of this section, the "portion of the decedent's estate attributable to the decedent's predeceased spouse" means all of the following property in the decedent's estate:

(1) One-half of the community property in existence at the time of the death of the predeceased spouse.

(2) One-half of any community property, in existence at the time of death of the predeceased spouse, which was given to the decedent by the predeceased spouse by way of gift, descent, or devise.

(3) That portion of any community property in which the predeceased spouse had any incident of ownership and which vested in the decedent upon the death of the predeceased spouse by right of survivorship.

(4) Any separate property of the predeceased spouse which came to the decedent by gift, descent, or devise of the predeceased spouse or which vested in the decedent upon the death of the predeceased spouse by right of survivorship.

(g) For the purposes of this section, quasi-community property shall be treated the same as community property.

(h) For the purposes of this section:

(1) Relatives of the predeceased spouse conceived before the decedent's death but born thereafter inherit as if they had been born in the lifetime of the decedent.

(2) A person who is related to the predeceased spouse through two lines of relationship is entitled to only a single share based on the relationship which would entitle the person to the larger share.

*(Enacted by Stats. 1990, Ch. 79.)*

### **6403.**

(a) A person who fails to survive the decedent by 120 hours is deemed to have predeceased the decedent for the purpose of intestate succession, and the heirs are determined accordingly. If it cannot be established by clear and convincing evidence that a person who would otherwise be an heir has survived the decedent by 120 hours, it is deemed that the person failed to survive for the required period. The requirement of this section that a person who survives the decedent must survive the decedent by 120 hours does not apply if the application of the 120-hour survival requirement would result in the escheat of property to the state.

(b) This section does not apply to the case where any of the persons upon whose time of death the disposition of property depends died before January 1, 1990, and such case continues to be governed by the law applicable before January 1, 1990.

*(Enacted by Stats. 1990, Ch. 79.)*

#### **6404.**

Part 4 (commencing with Section 6800) (escheat) applies if there is no taker of the intestate estate under the provisions of this part.

*(Enacted by Stats. 1990, Ch. 79.)*

#### **6406.**

Except as provided in Section 6451, relatives of the halfblood inherit the same share they would inherit if they were of the whole blood.

*(Amended by Stats. 1993, Ch. 529, Sec. 3. Effective January 1, 1994.)*

#### **6407.**

Relatives of the decedent conceived before the decedent's death but born thereafter inherit as if they had been born in the lifetime of the decedent.

*(Enacted by Stats. 1990, Ch. 79.)*

#### **6409.**

(a) If a person dies intestate as to all or part of his or her estate, property the decedent gave during lifetime to an heir is treated as an advancement against that heir's share of the intestate estate only if one of the following conditions is satisfied:

(1) The decedent declares in a contemporaneous writing that the gift is an advancement against the heir's share of the estate or that its value is to be deducted from the value of the heir's share of the estate.

(2) The heir acknowledges in writing that the gift is to be so deducted or is an advancement or that its value is to be deducted from the value of the heir's share of the estate.

(b) Subject to subdivision (c), the property advanced is to be valued as of the time the heir came into possession or enjoyment of the property or as of the time of death of the decedent, whichever occurs first.

(c) If the value of the property advanced is expressed in the contemporaneous writing of the decedent, or in an acknowledgment of the heir made contemporaneously with the advancement, that value is conclusive in the division and distribution of the intestate estate.

(d) If the recipient of the property advanced fails to survive the decedent, the property is not taken into account in computing the intestate share to be received by the recipient's issue unless the declaration or acknowledgment provides otherwise.

*(Amended by Stats. 2002, Ch. 138, Sec. 8. Effective January 1, 2003.)*

#### **6410.**

(a) A debt owed to the decedent is not charged against the intestate share of any person except the debtor.

(b) If the debtor fails to survive the decedent, the debt is not taken into account in computing the intestate share of the debtor's issue.

*(Enacted by Stats. 1990, Ch. 79.)*

#### **6411.**

No person is disqualified to take as an heir because that person or a person through whom the person claims is or has been a person who is not a citizen or national of the United States.

*(Amended by Stats. 2021, Ch. 296, Sec. 54. (AB 1096) Effective January 1, 2022.)*

#### **6412.**

Except to the extent provided in Section 120, the estates of dower and curtesy are not recognized.

*(Enacted by Stats. 1990, Ch. 79.)*

#### **6413.**

A person who is related to the decedent through two lines of relationship is entitled to only a single share based on the relationship which would entitle the person to the larger share.

*(Enacted by Stats. 1990, Ch. 79.)*

#### **6414.**

(a) Except as provided in subdivision (b), this part does not apply where the decedent died before January 1, 1985, and the law applicable prior to January 1, 1985, continues to apply where the decedent died before January 1, 1985.

(b) Section 6412 applies whether the decedent died before, on, or after January 1, 1985.

(c) Where any of the following provisions is applied in a case where the decedent died before January 1, 1985, any reference in that provision to this part shall be deemed to be a reference to former Division 2 (commencing with Section 200) which was repealed by Section 19 of Chapter 842 of the Statutes of 1983:

(1) Section 377 of the Code of Civil Procedure.

(2) Section 3524 of the Penal Code.

*(Enacted by Stats. 1990, Ch. 79.)*