Beneficiaries: When Someone Dies Without a Will in Alberta

Two problems come up when someone dies without a Will:

1. **No one can deal with the estate until the court gives someone permission.**

   Alberta's *Estate Administration Act* says who can apply to the court for a grant of administration – a court order that names a personal representative to deal with the deceased's estate.

Learn more in CPLEA's booklet called Get a Grant of Probate or Administration.

2. **There is no record of who the deceased wants to inherit their property.**

   Alberta's *Wills and Succession Act* says who inherits (receives) the deceased's estate. The law assumes the deceased would have left their estate to their family. After the personal representative pays the deceased's debts, the beneficiaries receive what's left in the estate.

The rest of this document explains who may inherit an estate when someone dies without a Will in Alberta.



If the deceased was First Nations and lived on reserve, the law for estates is different. Learn more from BearPaw Legal Resources (bearpawlegalresources.ca) or Indigenous Services Canada (www.canada.ca/en/indigenous-services-canada.html).

Important terms

An **adult interdependent partner** is a person in an adult interdependent relationship (AIR). An AIR is a unique legal relationship in Alberta. It describes two people who live together, with or without children, and meet certain requirements.

Learn more on the What is your marital status and Move in together pages (at family.cplea.ca).

A **descendant** is your child, grandchild, great-grandchild or another person directly descended from you. A person's descendants do not include their parents, grandparents, siblings, nieces, nephews, aunts, uncles, or other relatives.

An **estate** is the property a person owns when they die, including their home, money, pets, vehicles and other belongings. Some property does not become part of your estate:

- Property you own in joint tenancy usually passes directly to the surviving joint owners
- Assets with named beneficiaries, such as investments and pensions, go directly to the named people

To die **intestate** means to die without a Will.

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Who inherits the deceased's estate

To receive a gift, a beneficiary must be alive or in their mother's womb on the day the intestate person dies. If the beneficiary dies after the deceased but before the estate is divided up, their gift becomes part of their own estate.

The situations below are the most common. If your situation is different, talk to an estate lawyer.

If they *had* a spouse/AIP *and* ...

... descendants with *that person*	Whole estate to deceased's spouse/partner

EXAMPLE: Bill and Julian were adult interdependent partners. They adopted three children together and neither had any other children. Bill dies.

Julian inherits all of Bill's estate. Their children do not inherit anything from Bill's estate.

... descendants with a *different person*	The greater of $150,000 or 50% of the estate to deceased's spouse/partner The rest goes to deceased's descendants *per stirpes* (see last page)

EXAMPLE: Javier and Maria were adult interdependent partners. They did not have any children together, but Javier had three children from an earlier marriage.

Javier's estate is worth $500,000. Maria inherits $250,000 of Javier's estate (since half of $500,000 is greater than $150,000). The other half of the estate is divided equally between Javier's three children.

... *no* descendants	Whole estate to deceased's spouse/partner

EXAMPLE: Bob was married to Sally for 20 years. He didn't have any children. Bob dies.

Sally inherits all of Bob's estate.

If the deceased was *separated*

If the deceased and their spouse were separated when the deceased died, the spouse does not inherit any of the deceased's estate.

Being separated means the deceased and surviving spouse:

- had been living separate and apart for more than 2 years when the deceased died, or
- are named in a declaration of irreconcilability, or
- had signed an agreement that showed their intent to end the marriage, such as a separation agreement.

If they did *not* have a spouse/AIP *and* ...

... ***had*** **descendants**	*Per stirpes* to deceased's descendants

EXAMPLE: Margaret was not in a relationship when she died. She had four children from earlier relationships.

Her children each inherit 1/4 of her estate.

... ***no*** **descendants**	The law lists several classes of people who can be beneficiaries, in priority. If no one from a class is alive, then go to the next class: • Surviving parents • Descendants of parents (siblings, nieces and nephews) • Grandparents or descendants of grandparents • Great-grandparents or descendants of great-grandparents The estate is divided *per stirpes* among the people in the class.

EXAMPLE: Amira didn't have a spouse, adult interdependent partner or any children when she died.

If both her parents are alive, they each inherit 50% of her estate. If only one parent is alive, that parent inherits her whole estate. If Amira's parents are both dead, then look to the next class. If Amira has siblings, nieces and/or nephews, they inherit the estate *per stirpes*. If Amira doesn't have any siblings, nieces or nephews, then look to the next class, and so on.

If the deceased had *no relatives*

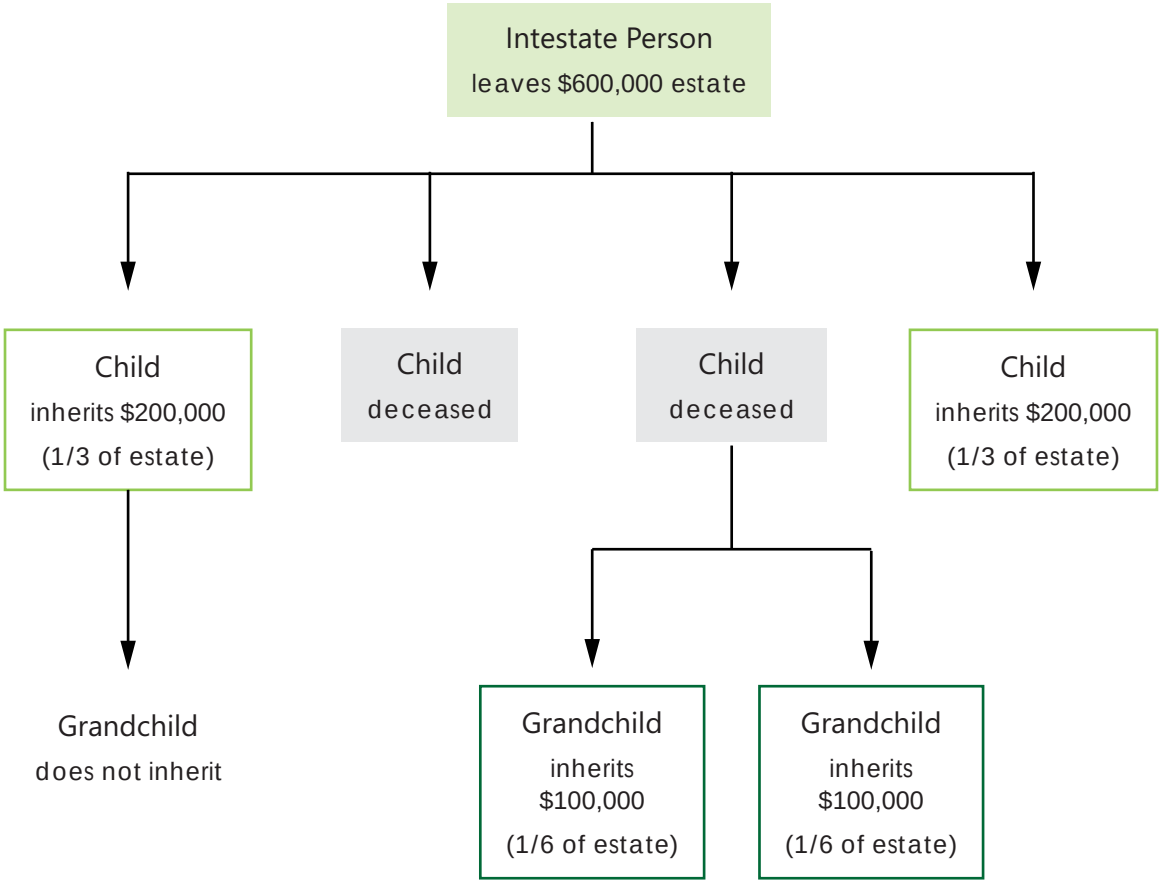
If the deceased had no spouse/adult interdependent partner and no blood relatives, a beneficiary eligible by law has two years from when the court issues the grant of administration to claim the estate.

If no one claims the estate, the Government of Alberta gets the unclaimed property. The Government keeps the property (usually money) for ten years. If no one has claimed it after ten years, the Government becomes the owner of the property.

How to divide an estate *per stirpes*

Per stirpes means "by branch." The estate is first divided into equal shares for one generation. If a person in that generation has died and has no surviving descendants, their share is not counted. If a person in that generation has died and has surviving descendants, their descendants share that person's portion.

Below is an example of how to divide an estate *per stirpes*.



Learn more from CPLEA about wills and estates

Find more information about the role of a personal representative and how to get a grant of probate.

Get started at **cplea.ca/willsandestates/**

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