

Who inherits assets when there is no Will in Manitoba?

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Estate planning is an important tool that helps ensure your wishes are followed when you pass away. However, a majority of Canadians do not have a Last Will and Testament when they pass away. As such, a common question that we encounter is “What happens to my estate if I pass away without a will?”, or more specifically “Who gets my assets?”

In Manitoba, the legislation that governs estates in which the deceased died without having a valid will is *The Intestate Succession Act*. This legislation sets out the path that assets follow where there is no will to specify how the assets of the deceased must be dealt with. There are different scenarios that are applicable based on the circumstances of the deceased:

Surviving Spouse and No Children or All Children with that Spouse

If the deceased passed away and left a surviving spouse or common-law partner and no children, the entire estate would be passed to that surviving spouse or common-law partner. This is the same if the deceased passed away and left a surviving spouse or common-law partner, and surviving children with whom they shared with that same spouse or common-law partner.

Surviving Spouse and Children that are Not Shared with Spouse

If the deceased passed away and had a surviving spouse or common-law partner, and surviving children, and any of those children were not all shared with that same spouse or common-law partner, the estate is divided differently. In this situation, the surviving spouse or common-law partner would receive \$50,000, or one-half, of the entire estate, and half of what is remaining in the estate.

It often helps to consider this complex situation in which the deceased passed away with a surviving spouse or common-law partner and surviving children they did not share with that same spouse or common-law partner, with a couple of examples which evidences how the estate may be shared depending on the size of the individual's estate:

Example 1:

If the deceased's estate in total was **\$200,000**, it would be divided as follows:

1. The spouse or common-law partner would receive **\$100,000**, which is one-half of the entire estate, and
2. The spouse or common-law partner would then also receive half of what is remaining, which would be **\$50,000**.
3. In total, the spouse or common-law partner would receive **\$150,000** of the entire estate, and the remaining **\$50,000** would be distributed to the deceased's children.

Example 2:

If the deceased's estate in total was **\$60,000**, it would be divided as follows:

1. The spouse or common-law partner would receive **\$50,000**, because they are to receive half or \$50,000 whichever is greater, and
2. The spouse or common-law partner would then also receive half of what is remaining, which would be **\$5,000**.
3. In total, the spouse or common-law partner would receive **\$55,000** of the entire estate, and the remaining **\$5,000** would be distributed to the deceased's children.

No Surviving Spouse or Children

Where the deceased dies without a spouse or common-law partner or children, the estate is passed to other members of the family. The legislation sets out the order in which the estate is received following the person's family tree:

1. Children
2. Parents
3. Siblings
4. Nieces and Nephews
5. Grandparents

The legislation sets out in more detail what and how much of the estate each family member would receive. It also sets out the rights of separated spouses, separated common-law partners, and the priority to be taken between spouses and common-law partners if the deceased had both a spouse and a common-law partner at the time of their death.

While the legislation arranges for a relatively clear plan where there is no will, it may not align with what people may want for their estate when they pass away. It can be a good reminder that the benefit to having a will allows you to decide exactly who gets a share of your estate and how much of your estate they would receive.

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