

# Determining heirs

## LEGISLATIVE COMMITTEE REPORT

Prepared by Linda G. Morrissey, Attorney at Law, Chairman of the Legislative Committee.

### Intestate Succession Laws Revised

For seventy-five (75) years, the law relating to intestate succession (84 O.S. Section 213, (B)) has remained unchanged. But effective July 1, 1985, that long standing law will be altered drastically in some areas. Any person dying on or after that date will be subject to a new method for determining heirs at law when there is not will. The following chart will provide a comparison of the laws of intestate succession prior to July 1, 1985 and after July 1, 1985:

<u>Survivors</u>	<u>Death prior to 7-1-85</u>	<u>Death after 6-30-85</u>
Spouse, one child, no previous marriages	1/2 to spouse, 1/2 to child.	1/2 to spouse, 1/2 to child.
Spouse; two children, no previous marriages	1/3 to spouse, 1/3 to each child.	1/2 to spouse 1/4 to each child.
Spouse, more than two children, no previous marriages	1/3 to spouse, 2/3 to children in equal shares.	1/2 to spouse, 1/2 to children in equal shares.
Spouse, one child of a previous marriage	1/2 to spouse, 1/2 to child.	1/2 to spouse, 1/2 to child.
Spouse, two or more children of a previous marriage	1/3 of property acquired during <u>coverture</u> , and an equal share, with all children, of property acquired prior to marriage to surviving spouse, to spouse. Remainder shared equally by all children.	1/2 of property acquired by <u>joint industry</u> during <u>coverture</u> , and an equal share, with all children, of the remaining estate. Children and issue of deceased children share equally by representation, the estate not passing to the spouse.
Spouse, two or more children of the marriage, previous marriage	1/3 of property acquired during <u>coverture</u> , and an equal share, with all children, of property acquired prior to marriage, to surviving spouse. Remainder shared equally by all children.	1/2 of all property to spouse, 1/2 to children equally.

Spouse, issue of  
- deceased child

1/2 to spouse,  
1/2 to issue of deceased  
child by representation.

1/2 to spouse,  
1/2 to issue of  
deceased child by  
representation.

Issue of deceased  
child or children

Issue of deceased child  
take by representation.

Issue of deceased  
child take by  
representation.

Spouse, father, mother

Spouse receives all  
property acquired by  
joint industry during  
coverture, and upon  
spouses's death, 1/2 of  
such property to husband's  
heirs and 1/2 to wife's  
heirs. Spouse receives  
1/2 of all other property,  
parent or parents receive  
remaining 1/2.

Spouse receives all  
property acquired by  
joint industry during  
coverture and 1/3 of  
remaining property.  
Remainder to father  
and mother equally or  
to the survivor of  
them.

Spouse, sibling (or  
siblings)

Spouse receives all  
property acquired by joint  
industry during coverture,  
and upon spouse's death,  
1/2 of such property to  
husband's heirs and 1/2  
to wife's heirs. Spouse  
receives 1/2 of all other  
property. Surviving  
sibling or siblings and  
children of deceased  
siblings share remainder  
by right of representation.

Spouse receives all  
property acquired by  
joint industry during  
coverture, and 1/3 of  
remaining property.  
Surviving issue of  
parents take remainder  
by right of  
representation.

Spouse, no issue, no father, no mother, no brother, no sister

Spouse takes all.

Spouse takes all.

Issue, no spouse

Surviving issue take all by representation.

Surviving issue take all by representation.

Father or mother or both, no spouse, no issue

All to the surviving parent, or parents in equal shares. If deceased is a minor without issue, and parents not living together, all estate.

All to the surviving parent, or parents in equal shares.

One or more siblings, no spouse, no issue, no parent

All to surviving siblings and children of deceased siblings by right of representation.

All to issue of parents by right of representation.

Grandparent, no issue, no spouse, no parent, no sibling

Estate passes to surviving grandparents in equal shares.

1/2 estate to paternal grandparent or grandparents in equal shares. 1/2 estate to maternal grandparent or grandparents in equal shares. If both sides are deceased, nearest issue take equally, more remote issue take by representation. If no surviving grandparent nor issue on one side, the other side takes all.

Kindred, no spouse, no issue, no parent, no sibling, no grandparent

Equal shares to next of kin of degree but claiming under different ancestors, those claiming under nearest ancestor take.

1/2 to the issue of paternal grandparents, if any. 1/2 to the issue of maternal grandparents, if any. If one side leaves no issue, other side takes all.

Kindred, no spouse,  
no issue, no parent,  
no issue of parent,  
no grandparent, no  
issue of grandparent

Equal shares to next of  
kin of degree. If equal  
degree but claiming under  
different ancestors, those  
claiming under nearest  
ancestor take.

Equal shares to the  
next of kin of equal  
degree.

No Kindred

Escheats to the state for  
the support of the common  
schools.

Escheats to the state  
for the support of the  
common schools.

#### Forced Heirship Statute Revised

Under Oklahoma law a surviving spouse can choose to take under the will of the deceased spouse or under the laws of intestate succession. A long line of cases in Oklahoma has required that if the surviving spouse chooses to take under the will, that spouse must file an election to do so. Failure to file this election has resulted in a presumption that the spouse chose to take by intestate succession.

A new law effective July 1, 1985 reverses this presumption. Under the new law, the surviving spouse is presumed to take under the will and does not have to file an election to take under the will. Therefore, if the surviving spouse wants to circumvent the will and take according to the laws of intestate succession he or she must file an election to take under the laws of intestate succession.

#### Termination of Joint Tenancy in Real Property

Joint tenancies in real property, where the joint tenants are husband and wife, may now be terminated by the "certificate" method without a clearance from the Oklahoma Tax Commission and without an order of the court determining that the estate has no tax liability. (58 O.S. Section 912)

We want to thank Judge M. M. McDougal for providing the material from which this summary was taken.

\*\*\*\*\*