

# INTESTACY IN CALIFORNIA

## INTESTACY AND ITS IMPORTANCE

*Having a Basic Understanding of How Intestacy Can Affect You and Your Family Is a Great Way to Understand Why Creating an Estate Plan Is So Important*



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One of the main reasons people create an estate plan is to avoid intestacy. Unfortunately, most people have no idea what intestacy is, much less know that avoiding it is a good idea. Having a basic understanding of how intestacy can affect you and your family is a

great way to understand why creating an estate plan is so important. So, let's take a closer look at what intestacy is and why it is so important.

## **THE ABILITY TO CHOOSE YOUR HEIRS**

You have the legal right to determine how you want to leave property after you die. The property you own as an individual will have to be transferred to new owners after your death. If you choose to, you can create a last will and testament that states your inheritance choices. No one can force you to make a will, and the decision to do so is entirely your own.

If you don't make a will and die leaving behind personally owned property, you are said to have died intestate. Intestacy is the legal status of the property you leave behind (your estate) when you don't have a last will and testament. Because most people never actually get around to making a will, half or more of all people who die every year actually die intestate.

## PROBATE PROPERTY AND YOUR ESTATE

It's important to point out that intestacy is a term that applies only to specific types of property you leave behind. Some of your property will pass to others



regardless of whether you have a last will and testament.

For example, if you have a life insurance policy, that policy allows you to select a beneficiary. The beneficiary is the person who will receive the policy payout

upon your death. You don't need to create a last will and testament in order to ensure that the beneficiary receives this money.

Similarly, if you have property that is owned by revocable living trust, the trust document determines who inherits the property after you die. The property owned under the trust will pass to the people identified in the trust document even if you die intestate.

All the property you own that isn't covered by your last will and testament is known as non-probate property. Probate is the legal process that applies after someone dies. If you die intestate, the probate court has to get involved to determine who is legally entitled to inherit probate property.

## INTESTATE SUCCESSION



If you choose not to make a will, you will still leave behind property that needs to be distributed. But if you don't make inheritance choices yourself, who will? In California, as with every other state, the answer to this question lies with intestate succession laws.

Because it's so common for people to die intestate, every state has adopted a set of laws that determines what happens to intestate property. These are known as intestacy laws, or laws of intestate succession. These laws effectively act as a predetermined set of inheritance choices. If you don't make a will, intestate succession laws make your inheritance choices for you.

The way in testate succession works is by first identifying who survived you after death. Did you leave behind a spouse? Children? Siblings or parents? Did you die without any identifiable living relatives? Regardless of the specific answer to this question, intestate succession laws determine who your legal heirs are. These laws essentially name your next of kin as the legal inheritor of all the intestate property left behind. Here are some examples.

- **You die leaving only a child, only a parent, or only a sibling.** When you leave behind a sole remaining family member, that family member automatically becomes your sole legal heir. So, if you die and the only family member to survive you is your sibling, your sibling automatically inherits all of your intestate property.
- **You die leaving behind only multiple children, only parents, or only siblings.** If you're only surviving family members are equally related to you, then they distribute your estate equally. For example, if you die leaving behind only two children, each child will receive half of your estate. On the other hand, if you die leaving behind only three siblings, each of them will receive one-third of your estate.
- **You die leaving behind children, siblings, and other family members.** In most situations people don't die leaving behind only a small number of family members. For example, a person might die leaving behind several children, a couple of brothers and sisters, as well as a surviving parent. In this situation, your closest relatives will inherit your property. So, if you leave behind several children and other relatives, your children are considered your closest relations. In this situation the surviving

children you leave behind will divide your inheritance equally amongst them, and your other relatives will not inherit anything.

- **You die leaving behind a spouse, children, and other relatives.** It's also very common for people to die leaving behind spouses as well as family members. Spousal inheritances in California are little more complicated, so we'll take a closer look at the situation in more depth in our next discussion. For know, what's important to realize about spousal inheritances is that a spouse will automatically be entitled to inherit at least part of the deceased spouse's property, regardless of what other family member survive.

## INTESTACY CHOICES AND YOUR CHOICES

The main point to take away from all these details is that intestate succession will apply to your estate whether you want it to or not unless you choose to act. Intestate succession laws are safety nets designed to catch all the estates that have not been distributed through the terms of the last will and testament. Though the law allows you to make inheritance choices on your own, intestate succession laws will always be there to apply if you don't act in time. If you'd like to know what you can do to avoid these laws, you will want to talk to an estate planning lawyer as soon as possible.

## About the Author



### Timothy P Murphy

Timothy P. Murphy is an estate planning and elder law attorney whose practice emphasizes helping people to build, preserve and pass on their wealth. He works with his clients to accomplish their goals while avoiding unnecessary court proceedings and minimizing or eliminating exposure to death taxes. Mr. Murphy also assists families facing the myriad of problems associated with dealing with a loved one's declining health and rising needs for care. He has practiced law in the Sacramento area for 29 years, first with a large firm, and then with his own firm since 1987.

Tim has written a regular column on legal issues for Senior Magazine. He also was a regular featured guest on the Money Experts radio program heard locally on KFBK (AM 1530). Tim has been featured in the Sacramento Bee, Sacramento Business Journal, Sacramento Magazine, Comstock's Magazine and other publications on estate planning and related topics. He also assisted local Channel 3 (KCRA) in an investigative report on the trust mill problem in the Sacramento area and was featured on Channel 10 (KXTV) in its series on personal financial planning.

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