



Who Are Your Descendants?

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Descendants are the people authorized by your state's laws who will inherit and receive your possessions when you die.

Your state has a set of rules called the laws of intestate succession. These rules act as a substitute will and include a list of your descendants, also known as heirs. The state law ranks them in order of how they will divide your possessions among them. Lineal descendants are the direct line of relationships starting with your children and continuing down through your grandchildren and great-grandchildren. Collateral descendants include your siblings, nieces, and nephews.

Each state has its own variety of intestate succession laws. Each state's law provides that the property is to be distributed to the closest surviving relatives. In most states, priority goes to your surviving spouse, followed by your children, your parents, your siblings, your nieces and nephews, and your next of kin. Many states require that your surviving spouse and children each receive a fractional share of your estate.

If you use a do-it-yourself will kit and your will is incomplete or incorrect, most state laws will consider your document to be invalid, which means your desires will not be followed and the intestate succession rules will apply.

One of the dangers of relying upon your state's intestate succession laws to define your descendants is that the rules may not match your true distribution wishes. Suppose you want to make sure that your grandchildren receive most of your estate so they can attend college or simply have a better life than their parents. Most intestate succession statutes give your children priority over your grandchildren. If you want someone who is not a relative to inherit your assets you will need to specifically name them in your will, because without a will, your life partner, significant other, lifelong friend, or favorite charity, for example, will be out of luck because they are typically not included on a state's list of intestate descendants. To make matters worse, if you do not have any surviving relatives, all your property that you spent a lifetime acquiring will be legally assigned (i.e., escheated) to the state.

However, you can use your state's intestate succession statutes as a backup planning tool to cover situations when your beneficiaries have died before you. For example,

your will leaves your entire estate to your wife and child, but they die before you. Your will could provide that if your beneficiaries predecease you, then one-half of your estate is to be distributed to your heirs at law and one-half of your estate goes to your wife's heirs at law, as defined in your state's rules of intestate succession.

Intestacy laws will also apply in situations where your will has improperly excluded someone from receiving a share of your estate, such as when a spouse or minor child is completely excluded from a will contrary to state law. A pretermitted heir is someone who is included on your state's list of intestate descendants but who was not mentioned in your will. The most common type of pretermitted heir is a child born out of wedlock or a child who is estranged from the family. If you fail to mention the existence of all of your children, or you fail to mention your wife, your will can be considered void and the person you failed to mention can claim a share of your estate through application of the intestate succession rules.

If you attempt to exclude an heir and your will does not provide for the disposition of all of your property, then you will have died partially intestate. The portion of your estate that is not included in your will is then subject to the rules of intestate succession. Accordingly, that person whom you wanted excluded from taking an inheritance under your will could receive property by operation of the laws of intestate succession. When preparing your will, be sure you have accounted for all of your property and all of your family members so that the final document will not be ruled invalid and void.

The Law Office of Richard F. Nevins provides legal services in the areas of wills, trusts, probate, and business formation in Riverside, California.