

WILLS WEEK: OCTOBER 2ND -6TH

What Happens When Someone Dies Without a Will?

Written by Amanda Marsden, Senior Family Lawyer & Estate Planning Lawyer

The passing of a loved one is always a difficult and emotional time. If a loved one passes without a valid will in place, the difficulty experienced by the family is often increased. When someone in Canada dies without a valid will, they are said to have died intestate. In such cases, the distribution of their estate is governed by specific laws and regulations that vary depending on the province or territory in which the deceased resided. In this blog, we'll explore the legal intricacies of dying intestate in Canada, focusing on asset distribution and debt settlement in the absence of a will.

Appointment of an Administrator

When an individual passes away without a will, the first step in the intestacy process is the appointment of an administrator. An administrator is a person or entity appointed by the court to manage the deceased person's estate and ensure that their assets are distributed in accordance with estate law.

The court typically prioritizes the following individuals or entities for appointment as administrators, in descending order:

1. The surviving spouse or common-law partner
2. The deceased's adult children
3. Other close relatives, such as parents or siblings
4. Creditors of the deceased

The court will make its decision based on the circumstances and relationships involved. The administrator's role is to identify, gather, and manage the deceased person's assets, pay off debts and taxes, and distribute the remaining estate among the legal heirs. Given that the administrator has no guidance regarding the deceased individual's wishes, they simply proceed based on their assumptions of what the deceased individual may have wanted.



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How are Assets Distributed?

The distribution of assets in an intestate estate is determined by the laws of the province or territory in which the deceased resided at the time of their death. While specific rules and regulations may vary, the general principles of intestate succession in Canada include the following:

- **Spouse's Share** - In most provinces and territories, the surviving spouse or common-law partner is entitled to a significant portion of the estate. This is usually the case, even if the deceased person and their spouse were estranged. The exact share varies, but it is typically a significant portion, with the rest distributed among the deceased's children and, in some cases, other relatives.
- **Children's Share** - If the deceased had children, they would usually inherit a portion of the estate, even if there is a surviving spouse. The share of the estate allocated to children depends on various factors, such as the number of children and the province or territory's laws.
- **Parents and Siblings** - In the absence of a surviving spouse or children, the estate may be distributed among the deceased's parents or, if the parents are deceased, their siblings. Again, this would be the case even in circumstances where the deceased individual was estranged from these relatives.
- **Other Relatives** - In some cases, more distant relatives may inherit a portion of the estate if there are no surviving immediate family members.
- **No Known Heirs** - If there are no known heirs or close relatives, the estate may be reverted to the provincial or territorial government.



How is Debt Paid?

The administrator must use the assets from the deceased person's estate to pay off any outstanding debts prior to distribution to potential beneficiaries. They are usually responsible for notifying creditors of the deceased person's death. Creditors then have a certain period within which they can make claims against the estate. The estate can be responsible for various types of debts such as:

- **Funeral Expenses** – these are usually one of the first expenses to be paid from the estate.
- **Secured Debts** – these are debts secured by specific assets, such as a mortgage on a house or a car loan. Typically, these debts are paid by selling the assets themselves. If the value of the asset exceeds the debt, any surplus may go to the estate.
- **Unsecured Debts** - these include credit card debts, personal loans, and other debts without specific collateral. They are paid from the estate's remaining assets, if any.
- **Taxes** - any outstanding taxes owed by the deceased person, such as income tax or property tax, are paid from the estate.
- **Administrative Expenses** - the costs associated with administering the estate, including legal fees and court fees, are usually paid from the estate's assets.
- Depending on the jurisdiction, there may be a specific order or priority for paying off debts from the estate. In Alberta for example, funeral expenses and secured debts often take precedence, followed by payments related to administration of the estate, unsecured debts and then taxes. However, there can be adjustments to how the debts are prioritized depending on the specific circumstances and value of the assets in the estate.

If the assets in the estate are not sufficient to cover all the debts, the debts are typically paid on a pro-rata basis, which means creditors may receive a percentage of what they are owed based on the available assets. It's important to note that the deceased person's debts are generally not passed on to their surviving family members or potential beneficiaries unless they were co-signers or joint account holders on the debt. In most cases, the estate is solely responsible for any debts.

Dying intestate in Canada means that the distribution of one's assets is subject to specific provincial or territorial laws and regulations. While these laws aim to ensure a fair distribution of assets, they likely do not align with an individual's personal wishes. It's easy to imagine the difficult position of a court appointed administrator who is required to distribute a portion of an estate to an estranged relative, who the deceased individual would not have listed as a beneficiary had they had the benefit of a will.

To maintain control over how your assets are distributed and avoid the complexities of intestacy, it's essential to have a valid will. Our experienced lawyers can guide you through the process, ensuring that your wishes are accurately reflected and that your estate will be administered as you intend. By taking this crucial step, you'll provide both yourself and your family peace of mind, knowing that potential pitfalls have been preemptively addressed. Don't leave your estate to chance—**schedule your free 20-minute consultation with a Crossroads Law lawyer today to gain the advice and support you need.**



Amanda Marsden

✉ amarsden@crossroadslaw.ca

☎ 1-877-445-2627 ext. 105

CALGARY OFFICE

📍 Suite 1800
330 5th Avenue SW
Calgary, AB, T2P 0L4
Canada

📅 Book a consultation:

☎ 1-800-466-1838

✉ info@crossroadslaw.ca

📍 Calgary Family Law

📞 Main Office & Fax:

☎ 1-877-445-2627