

CHAPTER 852

INTESTATE SUCCESSION

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Cross-reference: See definitions in ch. 851.

852.01 Basic rules for intestate succession. (1) WHO ARE HEIRS. The net estate of a decedent which the decedent has not disposed of by will, whether the decedent dies without a will, or with a will which does not completely dispose of the decedent's estate, passes to the decedent's surviving heirs as follows:

(a) To the spouse:

1. If there are no surviving issue of the decedent, or if the surviving issue are all issue of the surviving spouse and the decedent, the entire estate.

2. If there are surviving issue one or more of whom are not issue of the surviving spouse, one-half of that portion of the decedent's net estate not disposed of by will consisting of decedent's property other than marital property.

(b) To the issue, the share of the estate not passing to the spouse under par. (a), or the entire estate if there is no surviving spouse; if the issue are all in the same degree of kinship to the decedent they take equally, but if they are of unequal degree then those of more remote degrees take by representation.

(c) If there is no surviving spouse or issue, to the parents.

(d) If there is no surviving spouse, issue or parent, to the brothers and sisters and the issue of any deceased brother or sister by representation.

(e) If there is no surviving spouse, issue, parent or brother or sister, to the issue of brothers and sisters; if such issue are all in the same degree of kinship to the decedent they take equally, but if they are of unequal degree then those of more remote degrees take by representation.

(f) If there is no surviving spouse, issue, parent or issue of a parent, to the grandparents.

(g) If there is no surviving spouse, issue, parent, issue of a parent, or grandparent, to the intestate's next of kin in equal degree.

(2) REQUIREMENT THAT HEIR SURVIVE DECEDENT FOR A CERTAIN TIME. If any person who would otherwise be an heir under sub. (1) dies within 72 hours of the time of death of the decedent, the net estate not disposed of by will passes under this section as if that person had predeceased the decedent. If the time of death of the decedent or of the person who would otherwise be an heir, or the times of death of both, cannot be determined, and it cannot be established that the person who would otherwise be an heir has survived the decedent by at least 72 hours, it is presumed that the person died within 72 hours of the decedent's death. In computing time for purposes of this subsection, local standard time at the place of death of the decedent is used.

(2m) REQUIREMENT THAT HEIR NOT HAVE INTENTIONALLY KILLED THE DECEASED. (a) If any person who would otherwise be an heir under sub. (1) has unlawfully and intentionally killed the

decedent, the net estate not disposed of by will passes as if the killer had predeceased the decedent.

(b) A final judgment of conviction of unlawful and intentional killing is conclusive for purposes of this subsection.

(bg) A final adjudication of delinquency on the basis of unlawfully and intentionally killing the decedent is conclusive for purposes of this subsection.

(br) In the absence of a conviction under par. (b) or an adjudication under par. (bg), the court, on the basis of clear and convincing evidence, may determine whether the killing was unlawful and intentional for purposes of this subsection.

(c) This subsection does not affect the rights of any person who, before rights under this subsection have been adjudicated, purchases for value and without notice from the killer property that the killer would have acquired except for this subsection; but the killer is liable for the amount of the proceeds. No insurance company, bank or other obligor paying according to the terms of its policy or obligation is liable because of this subsection unless before payment it has received at its home office or principal address written notice of a claim under this subsection.

(3) ESCHEAT. If there are no heirs of the decedent under subs. (1) and (2), the net estate escheats to the state to be added to the capital of the school fund.

History: 1977 c. 214, 449; 1981 c. 228; 1983 a. 186; 1985 a. 37; 1987 a. 222; 1987 a. 393 s. 53; 1991 a. 224; 1993 a. 486.

NOTE: See notes in 1985 Wis. Act 37 (marital property trailer bill) and 1991 Wis. Act 224.

Cross-reference: See ss. 863.37 (2) and 863.39 (1) for deposit of funds with state treasurer.

Purported residuary clause made only specific and general bequests, making no dispositive provision for the residuum; therefore, although contrary to the implied wish of testator, the spouse inherited the residuum under (1) (a) 1. In *Matter of Estate of McWilliams*, 78 W (2d) 328, 254 NW (2d) 277.

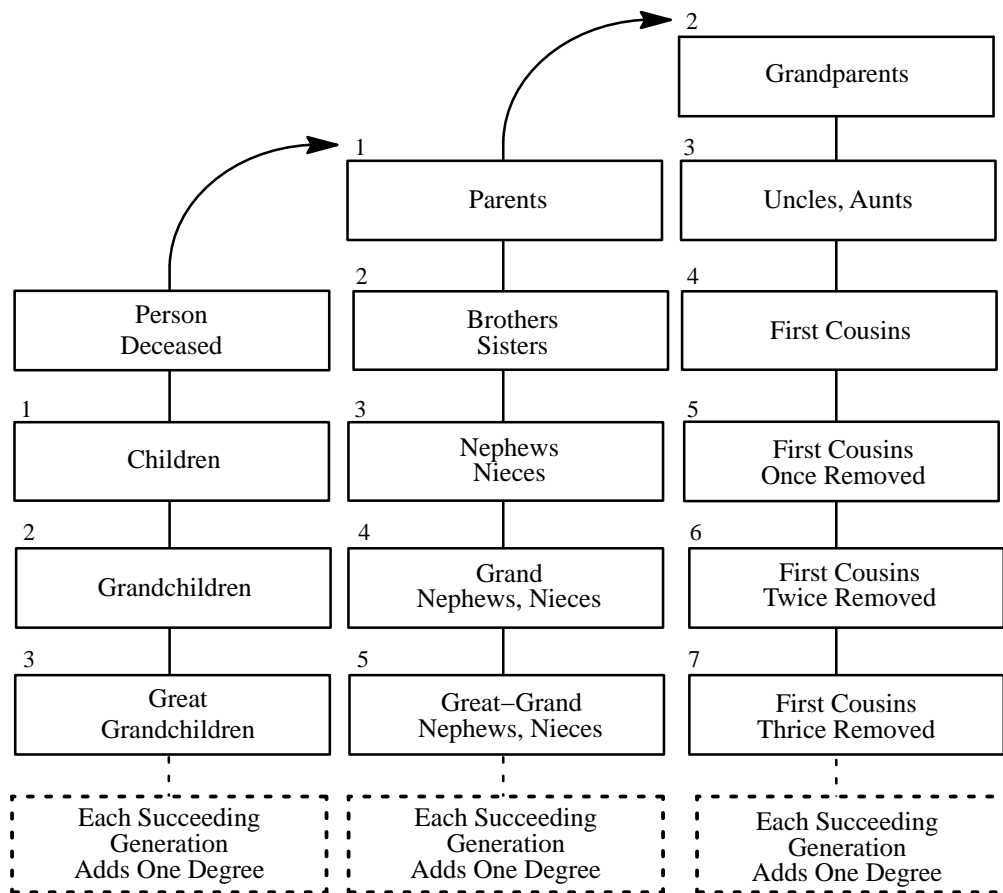
Disposition of estate of decedent killed by beneficiary discussed. In *Matter of Estate of Safran*, 102 W (2d) 79, 306 NW (2d) 27 (1981).

A conviction for reckless homicide of the decedent does not automatically prevent the killer from inheriting, but requires an evidentiary hearing under sub. (2m) (br) to determine intent. *Matter of Estate of Jackson*, 186 W (2d) 439, 521 NW (2d) 173 (Ct. App. 1994).

852.03 Related rules. (1) MEANING OF REPRESENTATION. When representation is called for by s. 852.01 (1) (b), (d) or (e), succession is accomplished as follows: the estate is divided into as many shares as there are surviving heirs in the nearest degree of kinship and deceased persons in the same degree who left issue who survive decedent, each surviving heir in the nearest degree receiving one share and the share of each deceased person in the same degree being divided among the deceased person's issue in the same manner until each part passes to a surviving heir.

(2) COMPUTING DEGREES OF KINSHIP. The degree of kinship is computed according to the rules of the civil law, as follows: [See Figure 852.03 (2) following]

Figure 852.03 (2)



(3) RELATIVES OF THE HALF BLOOD. Relatives of the half blood take the same share as if they had been of the whole blood.

(4) POSTHUMOUS HEIRS. A person may be an heir under s. 852.01 even though born after the death of the decedent if that person was conceived before decedent's death.

History: 1993 a. 486.

852.05 Status of nonmarital child for purposes of intestate succession. **(1)** A nonmarital child or the child's issue is entitled to take in the same manner as a marital child by intestate succession from and through his or her mother, and from and through his or her father if the father has either been adjudicated to be the father in a paternity proceeding under ch. 767, or has admitted in open court that he is the father, or has acknowledged himself to be the father in writing signed by him.

(2) Property of a nonmarital child passes in accordance with s. 852.01 except that the father or the father's kindred can inherit only if the father has been adjudicated to be the father in a paternity proceeding under ch. 767.

(3) This section does not apply to a child who becomes a marital child by the subsequent marriage of the child's parents under s. 767.60. The status of a nonmarital child who is legally adopted is governed by s. 851.51.

History: 1979 c. 32 s. 92 (2); 1979 c. 352; 1981 c. 391; 1983 a. 447; 1993 a. 486.

Although paternity proceeding may not be maintained posthumously, (1) does not deny equal protection or due process to posthumous illegitimates. In re Estate of Blumreich, 84 W (2d) 545, 267 NW (2d) 870 (1978).

Court properly looked to extrinsic evidence to determine whether signed letter constituted reasonably clear and certain acknowledgment of paternity. C. R. v. American Standard Ins. Co. 113 W (2d) 12, 334 NW (2d) 121 (Ct. App. 1983).

One claiming to be nonmarital child and seeking benefit under (1) must first prove such status and overcome any presumption of paternity in effect. In Matter of Estate of Schneider, 150 W (2d) 286, 441 NW (2d) 335 (Ct. App. 1989).

New York law requiring judicial finding of paternity during father's lifetime in order for illegitimate child to inherit from intestate father did not deny equal protection. Lalli v. Lalli, 439 US 259 (1978).

This statute relating to heirship of illegitimates in effect at death of intestate unalotted member of Indian tribe governed illegitimate's claim to share of deceased estate. Eskra v. Morton, 380 F Supp. 205.

852.09 Assignment of home as part of share of surviving spouse. **(1)** If the intestate estate includes an interest in a home, the interest of the decedent is assigned to the surviving spouse as part of his or her share under s. 852.01 unless the surviving spouse files with the court at or before the hearing on the final account a written request that the home not be so assigned. The interest of the decedent in the home is valued with all liens deducted. Inventory value is prima facie the value of the interest in the home. If the value exceeds the share of the surviving spouse under s. 852.01, the court may either (a) assign the interest in the home to the surviving spouse subject to a lien in favor of the other heirs for their respective interests in the excess, or (b) assign the interest in the home to the surviving spouse upon payment by the latter to the personal representative of the amount by which the value of the interest exceeds the spouse's share.

(2) Home means any dwelling in the estate of the decedent which at the time of the decedent's death the surviving spouse occupies or intends to occupy; if there are several such dwellings, any one may be selected by the surviving spouse. It includes but is not limited to any of the following: a house, a mobile home, a duplex or multiple apartment building one unit of which is occupied by the surviving spouse, or a building used in part for a dwelling and in part for commercial or business purposes. The home includes all of the surrounding land, unless the court in its discretion sets off part of the land as severable from the remaining land. On petition of the surviving spouse or of any interested person that part of the land is not necessary for dwelling purposes and that it would be inappropriate to assign all of the surrounding land as the home, the court may set off for the home so much of the land as is necessary for a dwelling. In determining whether to allow a division of the land and in determining how much land should be set off, the court shall take into account the use and marketability of the parcels set off as the home and the remaining land. The court shall deny a petition for division unless division is clearly appropriate under the circumstances and can be made without prejudice to the rights of all persons interested in the estate.

History: 1993 a. 486.

852.11 Advancement in intestate estate. (1) WHEN GIFT IS AN ADVANCE. A gift by the decedent during the decedent's life-

time to an heir is an advance against the heir's intestate share to be taken into account by the court in the final judgment only if:

(a) There is a writing by the decedent clearly stating that the gift is an advance whether or not such writing is contemporaneous with the gift; or

(b) The heir states by writing or in court that the gift was an advance.

(2) DEATH OF ADVANCEE BEFORE DECEDENT. If a gift is made during lifetime to a prospective heir and such gift would have been an advance under sub. (1) but for the death of the prospective heir prior to the decedent or within the time limited by s. 852.01 (2), the amount of the advance shall be taken into account in computing the shares of the issue of the prospective heir to whom the gift was made, whether or not the issue take by representation.

(3) VALUATION. If any gift is an advance, its value shall be determined as of the time when the heir comes into possession or enjoyment of the property advanced, or the time of death of the decedent if that occurs first.

History: 1993 a. 486.

852.13 Right to disclaim intestate share. Any person to whom property would otherwise pass under s. 852.01 may disclaim all or part of the property as provided under s. 853.40.

History: 1973 c. 233; 1977 c. 309.