

# *The Intestate Succession Act*

*being*

Chapter I-13 of *The Revised Statutes of Saskatchewan, 1978*  
(effective February 26, 1979).

## **NOTE:**

This consolidation is not official. Amendments have been incorporated for convenience of reference and the original statutes and regulations should be consulted for all purposes of interpretation and application of the law. In order to preserve the integrity of the original statutes and regulations, errors that may have appeared are reproduced in this consolidation.

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## CHAPTER I-13

### An Act to make Uniform the Law respecting the Distribution of Estates of Intestates

#### **Short title**

1 This Act may be cited as *The Intestate Succession Act*.

R.S.S. 1978, c.I-13, s.1.

#### **Interpretation**

2 In this Act:

“estate”

(a) “estate” includes both real and personal property;

“issue”

(b) “issue” includes all lawful lineal descendants of the ancestor;

“net value”

(c) “net value” means the value of the estate wherever situated, both within and outside Saskatchewan, after payment of the charges thereon and the debts, funeral expenses, expenses of administration and succession duty.

R.S.S. 1965, c.126, s.2; R.S.S. 1978, c.I-13, s.2.

#### **Application of Act**

3 This Act is subject to any order affecting the estate of an intestate made by the Court of Queen’s Bench or the Surrogate Court for Saskatchewan under the authority of *The Dependent’s Relief Act*.

R.S.S. 1965, c.126, s.3; 1970, c.67, s.9; R.S.S. 1978, c.I-13, s.3.

#### **Intestate leaving spouse and issue**

4(1) If an intestate dies leaving a spouse and issue, his estate, where the net value thereof does not exceed \$10,000, shall go to his spouse.

(2) Where the net value exceeds \$10,000, the spouse shall be entitled to \$10,000 and shall have a charge upon the estate for that sum, with legal interest from the date of the death of the intestate.

(3) Of the residue of the estate, after payment of the said sum of \$10,000 and interest:

(a) where the intestate dies leaving a spouse and one child, one-half shall go to the spouse;

(b) where the intestate dies leaving a spouse and children, one-third shall go to the spouse.

(4) If a child has died leaving issue and such issue is alive at the date of the intestate’s death, the spouse shall take the same share of the estate as if the child had been living at that date.

R.S.S. 1965, c.126, s.4; R.S.S. 1978, c.I-13, s.4.

#### **Leaving issue**

5 If an intestate dies leaving issue, his estate shall be distributed subject to the rights of the spouse, if any, *per stirpes* among such issue.

R.S.S. 1965, c.126, s.5; R.S.S. 1978, c.I-13, s.5.

**c. I-13****INTESTATE SUCCESSION****Spouse and no issue**

**6** If an intestate dies leaving a spouse but no issue, his whole estate shall go to his spouse.

R.S.S. 1965, c.126, s.6; R.S.S. 1978, c.I-13, s.6.

**Neither spouse nor issue**

**7** If an intestate dies leaving no spouse or issue, his estate shall go to his father and mother in equal shares if both are living, but if either of them is dead the estate shall go to the survivor.

R.S.S. 1965, c.126, s.7; R.S.S. 1978, c.I-13, s.7.

**No spouse, issue, or parent**

**8** If an intestate dies leaving no spouse, issue, father or mother, his estate shall go to his brothers and sisters in equal shares, and if any brother or sister is dead, the children of the deceased brother or sister shall take the share their parent would have taken if living.

R.S.S. 1965, c.126, s.8; R.S.S. 1978, c.I-13, s.8.

**No spouse, issue, parent, brother or sister**

**9** If an intestate dies leaving no spouse, issue, father, mother, brother or sister, his estate shall go to his nephews and nieces in equal shares and in no case shall representation be admitted.

R.S.S. 1965, c.126, s.9; R.S.S. 1978, c.I-13, s.9.

**No spouse, issue, parent, brother, sister, nephew or niece**

**10** If an intestate dies leaving no spouse, issue, father, mother, brother, sister, nephew or niece, his estate shall be distributed equally among the next of kin of equal degree of consanguinity to the intestate and in no case shall representation be admitted.

R.S.S. 1965, c.126, s.10; R.S.S. 1978, c.I-13, s.10.

**Kindred and half-blood**

**11** For the purposes of this Act, degrees of kindred shall be computed by counting upward from the intestate to the nearest common ancestor and then downward to the relative, and the kindred of the half-blood shall inherit equally with those of the whole-blood in the same degree.

R.S.S. 1965, c.126, s.11; R.S.S. 1978, c.I-13, s.11.

**Posthumous births**

**12** Descendants and relatives of the intestate, begotten before his death, but born thereafter, shall inherit as if they had been born in the lifetime of the intestate and had survived him.

R.S.S. 1965, c.126, s.12; R.S.S. 1978, c.I-13, s.12.

**Advances to children**

**13(1)** If a child of a person who has died wholly intestate has been advanced by the intestate by portion, the portion shall be reckoned, for the purposes of this section only, as part of the estate of the intestate distributable according to law; and

- (a) if the advancement is equal to or greater than the share of the estate that the child would be entitled to receive as above reckoned, the child and his descendants shall be excluded from any share in the estate; but
  - (b) if the advancement is not equal to such share, the child and his descendants shall be entitled to receive so much only of the estate of the intestate as is sufficient to make all the shares of the children in the estate and advancement equal as nearly as can be estimated.
- (2) The value of a portion advanced shall be deemed to be that which has been expressed by the intestate or acknowledged by the child in writing, otherwise the value shall be the value of the portion when advanced.
- (3) The onus of proving that a child has been maintained or educated, or has been given money, with a view to a portion is upon the person so asserting, unless the advancement has been expressed by the intestate, or acknowledged by the child, in writing.

R.S.S. 1965, c.126, s.13; R.S.S. 1978, c.I-13, s.13.

**Estate undisposed of by will**

**14** All such estate as is not disposed of by will shall be distributed as if the testator had died intestate and had left no other estate.

R.S.S. 1965, c.126, s.14; R.S.S. 1978, c.I-13, s.14.

**No dower or courtesy**

**15** No spouse shall be entitled to dower in the land of her deceased husband dying intestate, and no husband shall be entitled to an estate by the courtesy in the land of his deceased wife so dying.

R.S.S. 1965, c.126, s.15; R.S.S. 1978, c.I-13, s.15.

**Rights of children of certain invalid marriages**

**16** Where, pursuant to section 36 of *The Marriage Act*, the court makes a declaration of presumption of death and the spouse of the person presumed to be dead marries again in accordance with the provisions of *The Marriage Act*, then, notwithstanding that it is later found that the person presumed to be dead was alive when the marriage ceremony was performed, the children of such marriage shall have the same benefits under this Act as they would have had if the person presumed to be dead had in fact died before the marriage.

R.S.S. 1965, c.126, s.16; R.S.S. 1978, c.I-13, s.16.

**Illegitimate children**

**17(1)** If a female person dies intestate, an illegitimate child of the female person shall be entitled to share in the estate as if he were the legitimate child of the female person.

(2) If a male person dies intestate, an illegitimate child of the male person shall be entitled to share in the estate as if he were the legitimate child of the male person, if a court of competent jurisdiction is satisfied:

- (a) that during the lifetime of the intestate, the intestate publicly or otherwise acknowledged that he was the father of the child; or
- (b) that at the time of the birth of the child the intestate was living with the mother of the child as her husband and that after the birth of the child the intestate seemed to have accepted the child as his own.

(3) If an illegitimate person dies intestate and his estate would, but for this subsection, escheat to the Crown, the estate shall pass to the father of the intestate as if the intestate were the legitimate child of the father, if a court of competent jurisdiction is satisfied:

- (a) that during the lifetime of the intestate, the father publicly or otherwise acknowledged that he was the father of the intestate; or
- (b) that at the time of the birth of the intestate, the father was living with the mother of the intestate as her husband and that after the birth of the intestate the father seemed to have accepted the intestate as his own child.

1971, c.18, s.1; 1973-74, c.51, s.1; R.S.S. 1978,  
c.I-13, s.17.

#### **Desertion and adultery**

**18** If the spouse of an intestate has left the intestate and is living in adultery at the time of his death, the spouse shall take no part in the intestate's estate.

R.S.S. 1965, c.126, s.20; R.S.S. 1978, c.I-13, s.18.

#### **Construction of Act**

**19** This Act shall be so interpreted and construed as to effect its general purpose of making uniform the law of the provinces that enact it.

R.S.S. 1965, c.126, s.17; R.S.S. 1978, c.I-13, s.19.