

# *The Intestate Succession Act, 1996*

*being*

Chapter I-13.1 of the *Statutes of Saskatchewan, 1996*  
(effective November 1, 1996) as amended by the *Statutes of  
Saskatchewan, 1999, c.5; and 2001, c.51.*

## **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-13.1

### An Act respecting the Distribution of Estates of Intestates

#### Short title

1 This Act may be cited as *The Intestate Succession Act, 1996*.

#### Interpretation

2 In this Act:

“**estate**” includes both real and personal property; («*succession*»)

“**issue**” includes all lawful lineal descendants of the ancestor; («*descendant*»)

“**net value**” means the value of the estate wherever situated, both within and outside Saskatchewan, after payment of any charges on the estate and the debts, funeral expenses and expenses of administration; («*valeur nette*»)

“**spouse**” means:

- (a) the legally married spouse of the intestate; or
- (b) if the intestate did not have a spouse within the meaning of clause (a) or had a spouse within the meaning of clause (a) to whom section 20 applies, a person who:
  - (i) cohabited with the intestate as spouses continuously for a period of not less than two years; and
  - (ii) at the time of the intestate’s death was continuing to cohabit with the intestate or had ceased to cohabit with the intestate within the 24 months before the intestate’s death. («*conjoint*»)

1996, c.I-13.1, s.2; 2001, c.51, s.6.

#### Application of Act

3 This Act is subject to any court order made pursuant to *The Dependants’ Relief Act, 1996* that affects the estate of an intestate.

1996, c.I-13.1, s.3.

#### Where intestate died on or before January 11, 1978

4(1) Where an intestate died on or after July 1, 1960 but before January 12, 1978 leaving a spouse and issue and the net value of the estate does not exceed \$10,000, the estate goes to the spouse.

(2) Where the net value exceeds \$10,000, the spouse is entitled to \$10,000 and has a charge on the estate for that amount, with legal interest from the date of the intestate’s death.

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

- (a) where the intestate dies leaving a spouse and one child, one-half goes to the spouse; and
- (b) where the intestate dies leaving a spouse and children, one-third goes to the spouse.

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(4) Where a child of an intestate died leaving issue and that issue is alive at the date of the intestate's death, the spouse takes the same share of the estate as if the child had been living at that date.

1996, c.I-13.1, s.4; 1999, c.5, s.2.

**Where intestate died between January 12, 1978 and June 22, 1990**

5(1) Where an intestate died on or after January 12, 1978 but before June 22, 1990 leaving a spouse and issue and the net value of the estate does not exceed \$40,000, the estate goes to the spouse.

(2) Where the net value exceeds \$40,000, the spouse is entitled to \$40,000 and has a charge on the estate for that amount, with legal interest from the date of the intestate's death.

(3) Of the residue of the estate, after payment of the \$40,000 and interest:

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

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

(4) Where a child of an intestate died leaving issue and that issue is alive at the date of the intestate's death, the spouse takes the same share of the estate as if the child had been living at that date.

1996, c.I-13.1, s.5.

**Where intestate died on or after June 22, 1990**

6(1) Where an intestate died on or after June 22, 1990 leaving a spouse and issue and the net value of the estate does not exceed \$100,000, the estate goes to the spouse.

(2) Where the net value exceeds \$100,000, the spouse is entitled to \$100,000 and has a charge on the estate for that amount, with legal interest from the date of the intestate's death.

(3) Of the residue of the estate, after payment of the \$100,000 and interest:

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

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

(4) Where a child of an intestate died leaving issue and that issue is alive at the date of the intestate's death, the spouse takes the same share of the estate as if the child had been living at that date.

1996, c.I-13.1, s.6.

**Issue share *per stirpes***

7 Where an intestate died leaving issue, the estate is to be distributed, subject to the rights of the spouse, if any, *per stirpes* among the issue.

1996, c.I-13.1, s.7.

**Spouse and no issue**

8 Where an intestate died leaving a spouse but no issue, the whole estate goes to the spouse.

1996, c.I-13.1, s.8.

**Neither spouse nor issue**

**9** Where an intestate died leaving no spouse or issue, the estate goes to the intestate's father and mother in equal shares if both are living, but if either of them is dead, the estate goes to the survivor.

1996, c.I-13.1, s.9.

**No spouse, issue or parent**

**10** Where an intestate died leaving no spouse, issue, father or mother, the estate goes to the intestate's brothers and sisters in equal shares, and if any brother or sister is dead, the children of the deceased brother or sister take the share their parent would have taken if living.

1996, c.I-13.1, s.10.

**No spouse, issue, parent or sibling**

**11** Where an intestate died leaving no spouse, issue, father, mother, brother or sister, the estate goes to the intestate's nephews and nieces in equal shares, and in no case is representation to be admitted.

1996, c.I-13.1, s.11.

**No spouse, issue, parent, sibling, nephew or niece**

**12** Where an intestate died leaving no spouse, issue, father, mother, brother, sister, nephew or niece, the estate is to be distributed equally among the next of kin of equal degree of consanguinity to the intestate, and in no case is representation to be admitted.

1996, c.I-13.1, s.12.

**Kindred and half-blood**

**13** For the purposes of this Act, degrees of kindred are to 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 are to inherit equally with those of the whole-blood in the same degree.

1996, c.I-13.1, s.13.

**Posthumous births**

**14** Descendants and relatives of the intestate, conceived before his or her death, but born after his or her death, inherit as if they had been born in the lifetime of the intestate and had survived him or her.

1996, c.I-13.1, s.14.

**Advances to children**

**15(1)** For the purposes of this section and section 16, where a child of a person who has died wholly intestate has been advanced by the intestate by portion, that portion is to be considered as part of the estate of the intestate distributable according to law.

**(2)** Where the advancement is equal to or greater than the share of the estate that the child would be entitled to receive pursuant to sections 4 to 14, the child and his or her descendants are excluded from any share in the estate.

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(3) Where the advancement is not equal to that share, the child and his or her descendants are entitled to receive a share of the estate that is sufficient to make all the shares of the children in the estate and advancement equal as nearly as can be estimated.

1996, c.I-13.1, s.15.

**Value of portion and onus of proof**

**16(1)** For the purposes of section 15, the value of a portion advanced is the value of the portion when advanced unless a value has been expressed by the intestate or acknowledged by the child in writing.

(2) The onus of proving that a child has been maintained or educated, or has been given money, with a view to a portion is on the person so asserting, unless the advancement has been expressed by the intestate, or acknowledged by the child, in writing.

1996, c.I-13.1, s.16.

**Estate undisposed of by will**

**17** Any portion of an estate that is not disposed of by will is to be distributed as though the testator had died intestate and had left no other estate.

1996, c.I-13.1, s.17.

**No dower or courtesy**

**18** No wife 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 dying intestate.

1996, c.I-13.1, s.18.

**Rights of children of certain invalid marriages**

**19** Where, pursuant to section 24 of *The Marriage Act, 1996*, a court makes a declaration of presumption of death and the spouse of the person presumed to be dead marries again in accordance with that 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 that marriage have the same benefits pursuant to this Act that they would have had if the person presumed to be dead had in fact died before the marriage.

1996, c.I-13.1, s.19.

**When surviving spouse takes no part in estate**

**20** Where the spouse of an intestate has left the intestate and is cohabiting with another person in a spousal relationship at the time of the intestate's death, the spouse takes no part in the intestate's estate.

1996, c.I-13.1, s.20; 2001, c.51, s.6.

## REPEAL AND COMING INTO FORCE

**R.S.S. 1978, c.I-13 repealed**

**21** *The Intestate Succession Act* is repealed.

1996, c.I-13.1, s.21.