Illinois Rules of Descent and Distribution

DESCENT AND DISTRIBUTION

(755 ILCS 5/2-1) (from Ch. 110 1/2, par. 2-1)
Sec. 2-1. Rules of descent and distribution. The intestate real and personal estate of a resident decedent and the intestate real estate in this State of a nonresident decedent, after all just claims against his estate are fully paid, descends and shall be distributed as follows:
(a) If there is a surviving spouse and also a descendant of the decedent: 1/2 of the entire estate to the surviving spouse and 1/2 to the decedent's descendants per stirpes.
(b) If there is no surviving spouse but a descendant of the decedent: the entire estate to the decedent's descendants per stirpes.
(c) If there is a surviving spouse but no descendant of the decedent: the entire estate to the surviving spouse.
(d) If there is no surviving spouse or descendant but a parent, brother, sister or descendant of a brother or sister of the decedent: the entire estate to the parents, brothers and sisters of the decedent in equal parts, allowing to the surviving parent if one is dead a double portion and to the descendants of a deceased brother or sister per stirpes the portion which the deceased brother or sister would have taken if living.
(e) If there is no surviving spouse, descendant, parent, brother, sister or descendant of a brother or sister of the decedent but a grandparent or descendant of a grandparent of the decedent: (1) 1/2 of the entire estate to the decedent's maternal grandparents in equal parts or to the survivor of them, or if there is none surviving, to their descendants per stirpes, and (2) 1/2 of the entire estate to the decedent's paternal grandparents in equal parts or to the survivor of them, or if there is none surviving, to their descendants per stirpes. If there is no surviving paternal grandparent or descendant of a paternal grandparent, but a maternal grandparent or descendant of a maternal grandparent of the decedent: the entire estate to the decedent's maternal grandparents in equal parts or to the survivor of them, or if there is none surviving, to their descendants per stirpes. If there is no surviving maternal grandparent or descendant of a maternal grandparent, but a paternal grandparent or descendant of a paternal grandparent of the decedent: the entire estate to the decedent's paternal grandparents in equal parts or to the survivor of them, or if there is none surviving, to their descendants per stirpes.
(f) If there is no surviving spouse, descendant, parent, brother, sister, descendant of a brother or sister or grandparent or descendant of a grandparent of the decedent: (1) 1/2 of the entire estate to the decedent's maternal great-grandparents in equal parts or to the survivor of them, or if there is none surviving, to their descendants per stirpes, and (2) 1/2 of the entire estate to the decedent's paternal great-grandparents in equal parts or to the survivor of them, or if there is none surviving, to their descendants per stirpes. If there is no surviving paternal great-grandparent or descendant of a paternal great-grandparent, but a maternal great-grandparent or descendant of a maternal great-grandparent of the decedent: the entire estate to the decedent's maternal great-grandparents in equal parts or to the survivor of them, or if there is none surviving, to their descendants per stirpes. If there is no surviving maternal great-grandparent or descendant of a maternal great-grandparent, but a paternal great-grandparent or descendant of a paternal great-grandparent of the decedent: the entire estate to the decedent's paternal great-grandparents in equal parts or to the survivor of them, or if there

is none surviving, to their descendants per stirpes.
(g) If there is no surviving spouse, descendant, parent, brother, sister, descendant of a brother or sister, grandparent, descendant of a grandparent, great-grandparent or descendant of a great-grandparent of the decedent: the entire estate in equal parts to the nearest kindred of the decedent in equal degree (computing by the rules of the civil law) and without representation.
(h) If there is no surviving spouse and no known kindred of the decedent: the real estate escheats to the county in which it is located; the personal estate physically located within this State and the personal estate physically located or held outside this State which is the subject of ancillary administration of an estate being administered within this State escheats to the county of which the decedent was a resident, or, if the decedent was not a resident of this State, to the county in which it is located; all other personal property of the decedent of every class and character, wherever situate, or the proceeds thereof, shall escheat to this State and be delivered to the State Treasurer pursuant to the Uniform Disposition of Unclaimed Property Act.
In no case is there any distinction between the kindred of the whole and the half blood.
(Source: P.A. 91-16, eff. 7-1-99.)

(755 ILCS 5/2-2) (from Ch. 110 1/2, par. 2-2)
Sec. 2-2. Children born out of wedlock. The intestate real and personal estate of a resident decedent who was a child born out of wedlock at the time of death and the intestate real estate in this State of a nonresident decedent who was a child born out of wedlock at the time of death, after all just claims against his estate are fully paid, descends and shall be distributed as provided in Section 2-1, subject to Section 2-6.5 of this Act, if both parents are eligible parents. As used in this Section, "eligible parent" means a parent of the decedent who, during the decedent's lifetime, acknowledged the decedent as the parent's child, established a parental relationship with the decedent, and supported the decedent as the parent's child. "Eligible parents" who are in arrears of in excess of one year's child support obligations shall not receive any property benefit or other interest of the decedent unless and until a court of competent jurisdiction makes a determination as to the effect on the deceased of the arrearage and allows a reduced benefit. In no event shall the reduction of the benefit or other interest be less than the amount of child support owed for the support of the decedent at the time of death. The court's considerations shall include but are not limited to the considerations in subsections (1) through (3) of Section 2-6.5 of this Act.
If neither parent is an eligible parent, the intestate real and personal estate of a resident decedent who was a child born out of wedlock at the time of death and the intestate real estate in this State of a nonresident decedent who was a child born out of wedlock at the time of death, after all just claims against his or her estate are fully paid, descends and shall be distributed as provided in Section 2-1, but the parents of the decedent shall be treated as having predeceased the decedent.
If only one parent is an eligible parent, the intestate real and personal estate of a resident decedent who was a child born out of wedlock at the time of death and the intestate real estate in this State of a nonresident decedent who was a child born out of wedlock at the time of death, after all just claims against his or her estate are fully paid, subject to Section 2-6.5 of this Act, descends and shall be distributed as follows:
(a) If there is a surviving spouse and also a descendant of the decedent: 1/2 of the entire estate to the surviving spouse and 1/2 to the decedent's descendants per stirpes.
(b) If there is no surviving spouse but a descendant of the decedent: the entire estate to the decedent's descendants per stirpes.

(c) If there is a surviving spouse but no descendant of the decedent: the entire estate to the surviving spouse.
(d) If there is no surviving spouse or descendant but the eligible parent or a descendant of the eligible parent of the decedent: the entire estate to the eligible parent and the eligible parent's descendants, allowing 1/2 to the eligible parent and 1/2 to the eligible parent's descendants per stirpes.
(e) If there is no surviving spouse, descendant, eligible parent, or descendant of the eligible parent of the decedent, but a grandparent on the eligible parent's side of the family or descendant of such grandparent of the decedent: the entire estate to the decedent's grandparents on the eligible parent's side of the family in equal parts, or to the survivor of them, or if there is none surviving, to their descendants per stirpes.
(f) If there is no surviving spouse, descendant, eligible parent, descendant of the eligible parent, grandparent on the eligible parent's side of the family, or descendant of such grandparent of the decedent: the entire estate to the decedent's great-grandparents on the eligible parent's side of the family in equal parts or to the survivor of them, or if there is none surviving, to their descendants per stirpes.
(g) If there is no surviving spouse, descendant, eligible parent, descendant of the eligible parent, grandparent on the eligible parent's side of the family, descendant of such grandparent, great-grandparent on the eligible parent's side of the family, or descendant of such great-grandparent of the decedent: the entire estate in equal parts to the nearest kindred of the eligible parent of the decedent in equal degree (computing by the rules of the civil law) and without representation.
(h) If there is no surviving spouse, descendant, or eligible parent of the decedent and no known kindred of the eligible parent of the decedent: the real estate escheats to the county in which it is located; the personal estate physically located within this State and the personal estate physically located or held outside this State which is the subject of ancillary administration within this State escheats to the county of which the decedent was a resident or, if the decedent was not a resident of this State, to the county in which it is located; all other personal property of the decedent of every class and character, wherever situate, or the proceeds thereof, shall escheat to this State and be delivered to the State Treasurer of this State pursuant to the Uniform Disposition of Unclaimed Property Act.
For purposes of inheritance, the changes made by this amendatory Act of 1998 apply to all decedents who die on or after the effective date of this amendatory Act of 1998. For the purpose of determining the property rights of any person under any instrument, the changes made by this amendatory Act of 1998 apply to all instruments executed on or after the effective date of this amendatory Act of 1998.
A child born out of wedlock is heir of his mother and of any maternal ancestor and of any person from whom his mother might have inherited, if living; and the descendants of a person who was a child born out of wedlock shall represent such person and take by descent any estate which the parent would have taken, if living. If a decedent has acknowledged paternity of a child born out of wedlock or if during his lifetime or after his death a decedent has been adjudged to be the father of a child born out of wedlock, that person is heir of his father and of any paternal ancestor and of any person from whom his father might have inherited, if living; and the descendants of a person who was a child born out of wedlock shall represent that person and take by descent any estate which the parent would have taken, if living. If during his lifetime the decedent was adjudged to be the father of a child born out of wedlock by a court of competent jurisdiction, an

authenticated copy of the judgment is sufficient proof of the paternity; but in all other cases paternity must be proved by clear and convincing evidence. A person who was a child born out of wedlock whose parents intermarry and who is acknowledged by the father as the father's child is a lawful child of the father. After a child born out of wedlock is adopted, that person's relationship to his or her adopting and natural parents shall be governed by Section 2-4 of this Act. For purposes of inheritance, the changes made by this amendatory Act of 1997 apply to all decedents who die on or after January 1, 1998. For the purpose of determining the property rights of any person under any instrument, the changes made by this amendatory Act of 1997 apply to all instruments executed on or after January 1, 1998.
(Source: P.A. 94-229, eff. 1-1-06.)

(755 ILCS 5/2-3) (from Ch. 110 1/2, par. 2-3)
Sec. 2-3. Posthumous child.) A posthumous child of a decedent shall receive the same share of an estate as if the child had been born in the decedent's lifetime.
(Source: P.A. 84-390.)

(755 ILCS 5/2-4) (from Ch. 110 1/2, par. 2-4)
Sec. 2-4. Adopted child.
(a) An adopted child is a descendant of the adopting parent for purposes of inheritance from the adopting parent and from the lineal and collateral kindred of the adopting parent and for the purpose of determining the property rights of any person under any instrument, unless the adopted child is adopted after attaining the age of 18 years and the child never resided with the adopting parent before attaining the age of 18 years, in which case the adopted child is a child of the adopting parent but is not a descendant of the adopting parent for the purposes of inheriting from the lineal or collateral kindred of the adopting parent. An adopted child and the descendants of the child who is related to a decedent through more than one line of relationship shall be entitled only to the share based on the relationship which entitles the child or descendant to the largest share. The share to which the child or descendant is not entitled shall be distributed in the same manner as if the child or descendant never existed. For purposes of inheritance, the changes made by this amendatory Act of 1997 apply to all decedents who die on or after January 1, 1998. For the purpose of determining the property rights of any person under any instrument, the changes made by this amendatory Act of 1997 apply to all instruments executed on or after January 1, 1998.
(b) An adopting parent and the lineal and collateral kindred of the adopting parent shall inherit property from an adopted child to the exclusion of the natural parent and the lineal and collateral kindred of the natural parent in the same manner as though the adopted child were a natural child of the adopting parent, except that the natural parent and the lineal or collateral kindred of the natural parent shall take from the child and the child's kindred the property that the child has taken from or through the natural parent or the lineal or collateral kindred of the natural parent by gift, by will or under intestate laws.
(c) For purposes of inheritance from the child and his or her kindred (1) the person who at the time of the adoption is the spouse of an adopting parent is an adopting parent and (2) a child is adopted when the child has been or is declared by any court to have been adopted or has been or is declared or assumed to be the adopted child of the testator or grantor in any instrument

bequeathing or giving property to the child.
(d) For purposes of inheritance from or through a natural parent and for determining the property rights of any person under any instrument, an adopted child is not a child of a natural parent, nor is the child a descendant of a natural parent or of any lineal or collateral kindred of a natural parent, unless one or more of the following conditions apply:
(1) The child is adopted by a descendant or a spouse of a descendant of a great-grandparent of the child, in which case the adopted child is a child of both natural parents.
(2) A natural parent of the adopted child died before the child was adopted, in which case the adopted child is a child of that deceased parent and an heir of the lineal and collateral kindred of that deceased parent.
(3) The contrary intent is demonstrated by the terms of the instrument by clear and convincing evidence.
An heir of an adopted child who, by reason of this subsection (d), is not a child of a natural parent is also not an heir of that natural parent or of the lineal or collateral kindred of that natural parent. A fiduciary who has actual knowledge that a person has been adopted, but who has no actual knowledge that any of paragraphs (1), (2), or (3) of this subsection apply to the adoption, shall have no liability for any action taken or omitted in good faith on the assumption that the person is not a descendant or heir of the natural parent. The preceding sentence is intended to affect only the liability of the fiduciary and shall not affect the property rights of any person.
For purposes of inheritance, the changes made by this amendatory Act of 1997 apply to all decedents who die on or after January 1, 1998. For the purpose of determining the property rights of any person under any instrument, the changes made by this amendatory Act of 1997 apply to all instruments executed on or after January 1, 1998.
(e) For the purpose of determining the property rights of any person under any instrument executed on or after September 1, 1955, an adopted child is deemed a child born to the adopting parent unless the contrary intent is demonstrated by the terms of the instrument by clear and convincing evidence.
(f) After September 30, 1989, a child adopted at any time before or after that date is deemed a child born to the adopting parent for the purpose of determining the property rights of any person under any instrument executed before September 1, 1955, unless one or more of the following conditions applies:
(1) The intent to exclude such child is demonstrated by the terms of the instrument by clear and convincing evidence.
(2) An adopting parent of an adopted child, in the belief that the adopted child would not take property under an instrument executed before September 1, 1955, acted to substantially benefit such adopted child when compared to the benefits conferred by such parent on the child or children born to the adopting parent. For purposes of this paragraph:
(i) "Acted" means that the adopting parent made one or more gifts during life requiring the filing of a federal gift tax return or at death (including gifts which take effect at death), or exercised or failed to exercise powers of appointment or other legal rights, or acted or failed to act in any other way.
(ii) Any action which substantially benefits the adopted child shall be presumed to have been made in such a belief unless a contrary intent is demonstrated by clear and convincing evidence.
(g) No fiduciary or other person shall be liable to any other person for any action taken or benefit received prior to October 1, 1989, under any instrument executed before September 1, 1955, that was based on a good faith interpretation of Illinois law regarding the right of adopted children to

take property under such an instrument.
(h) No fiduciary under any instrument executed before September 1, 1955, shall have any obligation to determine whether any adopted child has become a taker under such instrument due to the application of subsection (f) unless such fiduciary has received, on or before the "notice date", as defined herein, written evidence that such adopted child has become a taker of property. A fiduciary who has received such written evidence shall determine in good faith whether or not any of the conditions specified in subsection (f) exists but shall have no obligation to inquire further into whether such adopted child is a taker of property pursuant to such subsection. Such written evidence shall include a sworn statement by the adopted child or his or her parent or guardian that such child is adopted and to the best of the knowledge and belief of such adopted child or such parent or guardian, none of the conditions specified in such subsection exists. The "notice date" shall be the later of February 1, 1990, or the expiration of 90 days after the date on which the adopted child becomes a taker of property pursuant to the terms of any instrument executed before September 1, 1955.
(i) A fiduciary shall advise all persons known to him or her to be subject to these provisions of the existence of the right to commence a judicial proceeding to prevent the adopted child from being a taker of property under the instrument.
(Source: P.A. 90-237, eff. 1-1-98.)

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