IC 29-1-2

Chapter 2. Intestate Succession and Rights of Certain Interested Persons

IC 29-1-2-0.1

Application of certain amendments to chapter

Sec. 0.1. The following amendments to this chapter apply as follows:

(1) The amendments made to section 10 of this chapter by P.L.118-1997 do not apply to an individual whose death occurs before July 1, 1997.

(2) The amendments made to section 1 of this chapter by P.L.176-2003 apply only to the estate of an individual who dies after June 30, 2003.

(3) The amendments made to section 1 of this chapter by P.L.238-2005 apply to the estate of a person who dies after June 30, 2004.

(4) The amendments made to section 1 of this chapter by P.L.61-2006 apply to the estate of an individual who dies after June 30, 2005.

As added by P.L.220-2011, SEC.466.

IC 29-1-2-1

Estate distribution

Sec. 1. (a) The estate of a person dying intestate shall descend and be distributed as provided in this section.

(b) Except as otherwise provided in subsection (c), the surviving spouse shall receive the following share:

(1) One-half (1/2) of the net estate if the intestate is survived by at least one (1) child or by the issue of at least one (1) deceased child.

(2) Three-fourths (3/4) of the net estate, if there is no surviving issue, but the intestate is survived by one (1) or both of the intestate's parents.

(3) All of the net estate, if there is no surviving issue or parent.

(c) If the surviving spouse is a second or other subsequent spouse who did not at any time have children by the decedent, and the decedent left surviving the decedent a child or children or the descendants of a child or children by a previous spouse, the surviving second or subsequent childless spouse shall take only an amount equal to twenty-five percent (25%) of the remainder of:

(1) the fair market value as of the date of death of the real property of the deceased spouse; minus

(2) the value of the liens and encumbrances on the real property of the deceased spouse.

The fee shall, at the decedent's death, vest at once in the decedent's surviving child or children, or the descendants of the decedent's child or children who may be dead. A second or subsequent childless

spouse described in this subsection shall, however, receive the same share of the personal property of the decedent as is provided in subsection (b) with respect to surviving spouses generally.

(d) The share of the net estate not distributable to the surviving spouse, or the entire net estate if there is no surviving spouse, shall descend and be distributed as follows:

(1) To the issue of the intestate, if they are all of the same degree of kinship to the intestate, they shall take equally, or if of unequal degree, then those of more remote degrees shall take by representation.

(2) Except as provided in subsection (e), if there is a surviving spouse but no surviving issue of the intestate, then to the surviving parents of the intestate.

(3) Except as provided in subsection (e), if there is no surviving spouse or issue of the intestate, then to the surviving parents, brothers, and sisters, and the issue of deceased brothers and sisters of the intestate. Each living parent of the intestate shall be treated as of the same degree as a brother or sister and shall be entitled to the same share as a brother or sister. However, the share of each parent shall be not less than one-fourth (1/4) of the decedent's net estate. Issue of deceased brothers and sisters shall take by representation.

(4) If there is no surviving parent or brother or sister of the intestate, then to the issue of brothers and sisters. If the distributees described in this subdivision are all in the same degree of kinship to the intestate, they shall take equally or, if of unequal degree, then those of more remote degrees shall take by representation.

(5) If there is no surviving issue or parent of the intestate or issue of a parent, then to the surviving grandparents of the intestate equally.

(6) If there is no surviving issue or parent or issue of a parent, or grandparent of the intestate, then the estate of the decedent shall be divided into that number of shares equal to the sum of:

(A) the number of brothers and sisters of the decedent's parents surviving the decedent; plus

(B) the number of deceased brothers and sisters of the decedent's parents leaving issue surviving both them and the decedent;

and one (1) of the shares shall pass to each of the brothers and sisters of the decedent's parents or their respective issue per stirpes.

(7) If interests in real estate go to a husband and wife under this subsection, the aggregate interests so descending shall be owned by them as tenants by the entireties. Interests in personal property so descending shall be owned as tenants in common.

(8) If there is no person mentioned in subdivisions (1) through (7), then to the state.

(e) A parent may not receive an intestate share of the estate of the parent's minor or adult child if the parent was convicted of causing the death of the child's other parent by:

(1) murder (IC 35-42-1-1);

(2) voluntary manslaughter (IC 35-42-1-3);

(3) another criminal act, if the death does not result from the operation of a vehicle; or

(4) a crime in any other jurisdiction in which the elements of the crime are substantially similar to the elements of a crime listed in subdivisions (1) through (3).

If a parent is disqualified from receiving an intestate share under this subsection, the estate of the deceased child shall be distributed as though the parent had predeceased the child.

(Formerly: Acts 1953, c.112, s.201; Acts 1965, c.405, s.1.) As amended by P.L.283-1987, SEC.1; P.L.5-1988, SEC.154; P.L.167-1988, SEC.1; P.L.176-2003, SEC.3; P.L.238-2005, SEC.3; P.L.61-2006, SEC.1; P.L.101-2008, SEC.5; P.L.1-2009, SEC.151; P.L.143-2009, SEC.8.

IC 29-1-2-2

Repealed

(Formerly: Acts 1953, c.112, s.202. Repealed by P.L.176-2003, SEC.7.)

IC 29-1-2-3

Repealed

(Repealed by Acts 1973, P.L.288, SEC.2.)

IC 29-1-2-3.1

Wife's interest in real property by reason of marriage; extinguishment

Sec. 3.1. A married man may, in his own name as if he were unmarried, sell, barter, exchange, mortgage, lease, contract to sell, convey or execute any instrument, contract or commitment of any kind whatsoever affecting or in relation to his real property, and the deed, mortgage, lease or other instrument, contract or commitment so executed by a married man without the joinder or assent of his wife shall have the same effect as if it had been executed by the husband joined by his competent wife. Any such act or instrument, or any sale, disposition, transfer or encumbrance of the husband's real property by virtue of any decree, execution or mortgage, even though the wife is not a party thereto, shall extinguish the right of the wife to her one-third of any of said real property and shall extinguish any other right, choate or inchoate, of the wife in said real property which arose or could arise by reason of the marital relationship.

(Formerly: Acts 1973, P.L.288, SEC.1.)

IC 29-1-2-4

Part not disposed of by will

Sec. 4. If part but not all of the estate of a decedent is validly disposed of by will, the part not disposed of by will shall be distributed as provided herein for intestate estates.
(Formerly: Acts 1953, c.112, s.204.)

IC 29-1-2-5

Kindred of half blood; inheritance

Sec. 5. Kindred of the half blood shall inherit the same share which they would have inherited if they had been of the whole blood.
(Formerly: Acts 1953, c.112, s.205.)

IC 29-1-2-6

Afterborn children; inheritance

Sec. 6. Descendants 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. With this exception, the descent and distribution of intestate estates shall be determined by the relationships existing at the time of the death of the intestate.
(Formerly: Acts 1953, c.112, s.206.)

IC 29-1-2-7

Children born out of wedlock; inheritance

Sec. 7. (a) For the purpose of inheritance (on the maternal side) to, through, and from a child born out of wedlock, the child shall be treated as if the child's mother were married to the child's father at the time of the child's birth, so that the child and the child's issue shall inherit from the child's mother and from the child's maternal kindred, both descendants and collaterals, in all degrees, and they may inherit from the child. The child shall also be treated as if the child's mother were married to the child's father at the time of the child's birth, for the purpose of determining homestead rights and the making of family allowances.

(b) For the purpose of inheritance (on the paternal side) to, through, and from a child born out of wedlock, the child shall be treated as if the child's father were married to the child's mother at the time of the child's birth, if one (1) of the following requirements is met:

(1) The paternity of a child who was at least twenty (20) years of age when the father died has been established by law in a cause of action that is filed during the father's lifetime.

(2) The paternity of a child who was less than twenty (20) years of age when the father died has been established by law in a cause of action that is filed:

(A) during the father's lifetime; or

(B) within five (5) months after the father's death.

(3) The paternity of a child born after the father died has been established by law in a cause of action that is filed within

eleven (11) months after the father's death.

(4) The putative father marries the mother of the child and acknowledges the child to be his own.

(5) The putative father executed a paternity affidavit in accordance with IC 31-6-6.1-9(b) (before its repeal).

(6) The putative father executes a paternity affidavit as set forth in IC 16-37-2-2.1.

(c) The testimony of the mother may be received in evidence to establish such paternity and acknowledgment, but no judgment shall be made upon the evidence of the mother alone. The evidence of the mother must be supported by corroborative evidence or circumstances.

(d) If paternity is established as described in this section, the child shall be treated as if the child's father were married to the child's mother at the time of the child's birth, so that the child and the child's issue shall inherit from the child's father and from the child's paternal kindred, both descendants and collateral, in all degrees, and they may inherit from the child. The child shall also be treated as if the child's father were married to the child's mother at the time of the child's birth, for the purpose of determining homestead rights and the making of family allowances.

(Formerly: Acts 1953, c.112, s.207.) As amended by P.L.50-1987, SEC.3; P.L.261-1989, SEC.1; P.L.9-1999, SEC.1; P.L.165-2002, SEC.4; P.L.190-2016, SEC.36.

IC 29-1-2-8

Adopted children; inheritance

Sec. 8. For all purposes of intestate succession, including succession by, through, or from a person, both lineal and collateral, an adopted child shall be treated as a natural child of the child's adopting parents, and the child shall cease to be treated as a child of the natural parents and of any previous adopting parents. However, if a natural parent of a child born in or out of wedlock marries the adopting parent, the adopted child shall inherit from the child's natural parent as though the child had not been adopted, and from the child's adoptive parent as though the child were the natural child. In addition, if a person who is related to a child within the sixth degree adopts such child, such child shall upon the occasion of each death in the child's family have the right of inheritance through the child's natural parents or adopting parents, whichever is greater in value in each case.

(Formerly: Acts 1953, c.112, s.208; Acts 1961, c.267, s.1; Acts 1965, c.405, s.2; Acts 1969, c.254, s.1.) As amended by P.L.152-1987, SEC.9.

IC 29-1-2-9

Relationship through two lines; share

Sec. 9. A person who is related to the intestate through two (2)

lines of relationship, though under either one alone he might claim as next of kin, shall, nevertheless, be entitled to only one (1) share which shall be the share based on the relationship which would entitle him to the larger share.
(Formerly: Acts 1953, c.112, s.209.)

IC 29-1-2-10
Advancements; gratuitous inter vivos transfer

Sec. 10. (a) If a person dies intestate as to all his estate, property which he gave in his lifetime to any person who, if the intestate had died at the time of making the gift, would be entitled to inherit a part of his estate, shall be treated as an advancement against the heir's intestate share only if:

(1) the decedent declared in a writing or the heir acknowledged in a writing that the gift is an advancement; or

(2) the decedent's writing or the heir's written acknowledgment otherwise indicates that the gift is to be taken into account in computing the division and distribution of the decedent's intestate estate.

To the extent that the advancement does not exceed the intestate share the advancement shall be taken into account in computing the estate to be distributed. Every gratuitous inter vivos transfer is deemed to be an absolute gift and not an advancement unless shown to be an advancement.

(b) The advancement shall be considered as of its value at the time when the advancee came into possession or enjoyment or at the time of the death of the intestate, whichever first occurs.

(c) If the advancee dies before the intestate, leaving a lineal heir who takes from the intestate, the advancement shall be taken into account in the same manner as if it had been made directly to such heir. If such heir is entitled to a lesser share in the estate than the advancee would have been entitled to had he survived the intestate, then the heir shall only be charged with such proportion of the advancement as the amount he would have inherited, had there been no advancement, bears to the amount which the advancee would have inherited, had there been no advancement.
(Formerly: Acts 1953, c.112, s.210.) As amended by P.L.118-1997, SEC.10.

IC 29-1-2-11
Dower and curtesy abolished

Sec. 11. The estates of dower and curtesy are hereby abolished.
(Formerly: Acts 1953, c.112, s.211.)

IC 29-1-2-12
Repealed

(Repealed by P.L.147-1984, SEC.2.)

IC 29-1-2-12.1
Constructive trust

Sec. 12.1. (a) A person is a constructive trustee of any property that is acquired by the person or that the person is otherwise entitled to receive as a result of an individual's death, including property from a trust, if that person has been found guilty, or guilty but mentally ill, of murder, causing suicide, or voluntary manslaughter, because of the individual's death. A judgment of conviction is conclusive in a subsequent civil action to have the person declared a constructive trustee.

(b) A civil action may be initiated to have a person declared a constructive trustee of property that is acquired by the person, or that the person is otherwise entitled to receive, including property from a trust, as a result of an individual's death, if:

(1) the person has been charged with murder, causing suicide, or voluntary manslaughter, because of the individual's death; and

(2) the person has been found not responsible by reason of insanity at the time of the crime.

If a civil action is initiated under this subsection, the court shall declare that the person is a constructive trustee of the property if by a preponderance of the evidence it is determined that the person killed or caused the suicide of the individual.

(c) If a constructive trust is established under this section, the property that is subject to the trust may be used only to benefit those persons, other than the constructive trustee, legally entitled to the property, determined as if the constructive trustee had died immediately before the decedent. However, if any property that the constructive trustee acquired as a result of the decedent's death has been sold to an innocent purchaser for value who acted in good faith, that property is no longer subject to the constructive trust, but the property received from the purchaser under the transaction becomes subject to the constructive trust.

As added by P.L.147-1984, SEC.1. Amended by P.L.272-1985, SEC.1; P.L.238-2005, SEC.4.

IC 29-1-2-13
Waiver; intestate share

Sec. 13. (a) The intestate share or other expectancy to which the spouse or any other heir is entitled may be waived at any time by a written contract, agreement or waiver signed by the party waiving such share or expectancy. The promise of marriage, in the absence of fraud, is sufficient consideration in the case of an agreement made before marriage. In all other cases such contract, an agreement or waiver is binding upon the parties to the agreement if executed after a full disclosure of the nature and extent of such right, and if the thing or promise given to such party is a fair consideration under all the circumstances.

(b) Except as otherwise provided in the agreement, a waiver executed by the decedent's spouse is considered a waiver of the right to elect to take against the decedent's will. The written agreement may be filed in the same manner as is provided for the filing of an election under IC 29-1-3-3.
(Formerly: Acts 1953, c.112, s.213.) As amended by Acts 1982, P.L.171, SEC.13; P.L.283-1987, SEC.2; P.L.5-1988, SEC.155.

IC 29-1-2-14
Adultery; forfeiture of rights to estate or trust

Sec. 14. If either a husband or wife shall have left the other and shall be living at the time of his or her death in adultery, he or she as the case may be shall take no part of the estate or trust of the deceased husband or wife.
(Formerly: Acts 1953, c.112, s.214.) As amended by P.L.238-2005, SEC.5.

IC 29-1-2-15
Abandonment; forfeiture of rights to estate or trust

Sec. 15. If a person shall abandon his or her spouse without just cause, he or she shall take no part of his or her estate or trust.
(Formerly: Acts 1953, c.112, s.215; Acts 1975, P.L.289, SEC.1.) As amended by P.L.238-2005, SEC.6.