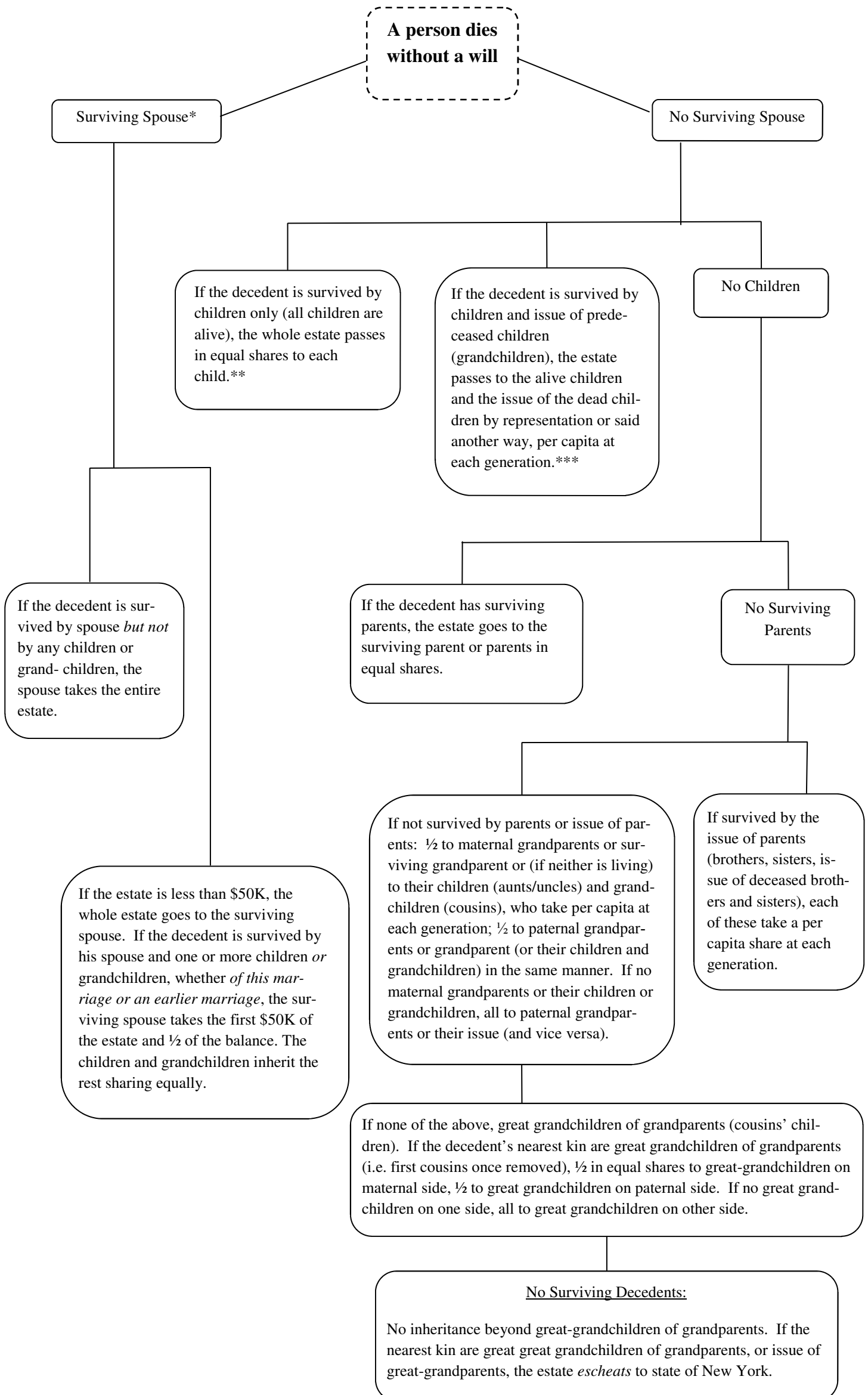


Under New York State Law, if a Person Dies Without a Will, Who Inherits Their Assets?



New York State Law governs how assets (usually real property) which are located in New York are transferred when a New York resident dies. Transferring assets in other states is controlled by intestacy laws in those states. Generally speaking, such laws are quite similar, however, there are some notable differences across states as to how assets are split when a decedent's survivors are a spouse and children.

Note: Decedent's relatives of the **half blood** are treated as if they were relatives of the **whole** blood.

*Some circumstances *disqualify* a spouse from inheriting under intestacy including the following:

- 1) Divorce: final decree of divorce or annulment valid under NY law.
- 2) Invalid Divorce: divorce or annulment not recognized as valid under NY law, procured *by* surviving spouse, outside NY. Note: one way street – does *not* bar surviving spouse if deceased spouse procured invalid divorce or annulment.
- 3) Separation Decree: rendered *against* surviving spouse. Note: does *not* bar spouse if the final decree of separation was rendered against deceased spouse. Only applies to separation decrees, not separation agreements unless there is specific language in the agreement waiving one's rights under the EPTL.
- 4) Marriage is void (e.g. incestuous or bigamous).
- 5) Abandonment or Lack of Support: surviving spouse abandoned or refused to support deceased spouse. If any of these happen, assume that the surviving spouse has predeceased the dead spouse and drop their share to their children (or whoever is next in line as distributees).

**Adopted children and their issue have full inheritance rights from adopting family (and vice versa if adopted child dies first). A child adopted by a new family has no inheritance rights from natural parents or other members of the natural family. Exception: Where a child is adopted by the spouse of a natural parent (e.g. Mom remarries and new Husband adopts child), the child and its issue can inherit from all three lines (natural parents lines and adopting spouse's line). If a child is adopted by a relative (e.g. an aunt or uncle) there is a *special rule*: if the adopted child is related to the decedent by both a natural relationship and adoption, the child inherits only under the natural relationship *unless* the decedent was the adopting parent, in which case the child inherits under the adoptive relationship only.

Nonmarital Children: A child born out of wedlock (“nonmarital child”) has full inheritance rights from the mother (and mother's family) and vice versa. However, the child inherits from the natural father *only if* paternity is established by one of the following: 1. Legitimated by marriage: Father married the mother after child's birth; 2. Order of filiation in paternity suit entered during the father's lifetime adjudicating the man to be the child's father; 3. Father files a witnessed and acknowledged affidavit (before a notary public) of paternity with the Putative Father Registry; 4. After death, paternity established in probate proceeding by *clear and convincing evidence* AND the father openly and notoriously acknowledged the child as his own (e.g. participation in school activities, gifts. Note: Support, by itself, is *not* enough to show clear and convincing evidence or open and notorious acknowledgment); or 5. A blood genetic marker test (DNA) *plus* other evidence proves paternity by *clear and convincing evidence*.

***How By Representation Works: Step 1: The property is divided into as many equal shares as there are (were) people at the first generational level at which there are survivors (usually children). Step 2: All living persons at that first generational level take one share each. Step 3: The shares of the deceased persons at the first generational level are combined and then divided equally among the takers at the next generational level in the same way. (The takers [grandchildren] must be taking by representation, meaning their parent must be dead). Result: Persons in the same degree of kinship to the decedent always take equal shares.

Grow Brooklyn is a non-profit organization that offers estate planning and estate administration services that help families preserve and protect their assets. Contact us at 718 418 8232 x2090 for more information.

