

## Heirship and the Informal Application

### Part Three

The conclusion to the heirship tip sheets. Now that you have determined that the decedent had no descendants, no siblings, and no issue of siblings at any level, it is time to go further up in the family tree (we call it the “ascendancy”) one more level to locate heirs. This is to descendants of **GRANDPARENTS. MN Statutes 524.2-103(4).**

**“(4) if there is no surviving . . . , but the decedent is survived by one or more grandparents or descendants of grandparents, half of the estate passes to the decedent’s paternal grandparents equally if both survive, or to the surviving paternal grandparent, or to the descendants of the decedent’s paternal grandparents or either of them if both are deceased, the descendants taking by representation\*; and the other half passes the decedent’s maternal relatives in the same manner; . . . “**

**\*need to read** MN Statutes 524.2-106(c)(2) for the definition of “by representation” when looking at descendants of grandchildren (it is different than other situations).

EXAMPLE: Decedent dies with no heirs until the level of grandparents – divide the estate in half maternal and half paternal. Put the words maternal or paternal in front of the words aunt/uncle/cousin to show that you made the necessary division. On the application heirship schedule do the following or something similar:

Decedent left - No spouse

No issue

No issue of predeceased issue

No parents

No siblings

No issue of predeceased siblings at any level

No maternal or paternal grandparents

**Maternal** grandparents were – ANDREW AND MARY SMITH

Both are deceased and they had 4 children:

Jane – (Decedent’s mother) - deceased.

Marjorie (aunt)- living

Carol (aunt) – living

Shirley (aunt) - **deceased**

Two surviving children

Fred (1<sup>st</sup> cousin)

Ginger (1<sup>st</sup> cousin)

Decedent died with 2 maternal aunts surviving. How will the estate be divided? One-half of the estate goes to the maternal side of the family; this one-half is divided into 2 shares one for Marjorie and one for Carol. **What about Shirley’s issue Fred and Ginger that survived the decedent? See the following language for direction:**

**524.2-106 (c)(2) “In the case of descendants of the decedent’s deceased maternal or paternal grandparents or either of them, the estate or part thereof is divided into as many equal shares as there are surviving descendants in the generation nearest the deceased grandparents or either of them that contains one or more surviving descendants. Each surviving descendant in the nearest generation is allocated one share.” (Emphasis added)**

In our example, the maternal grandparents had two children who survived the decedent. In accordance with the aforementioned statute, this is the level **nearest** the deceased maternal grandparents. Any surviving issue of Shirley, the predeceased child of Andrew and Mary, would be another level down. We do NOT include any issue of Shirley.

The maternal one-half of decedent’s estate is now allocated and the heirs identified. Remember Marjorie and Carol not only share the estate but they also have priority for appointment as personal representative.

Go through the same analysis for the paternal side of decedent’s family.

Paternal Grandparents were John and Julie Jones

Both are deceased and they had 3 children

Bob (Decedent’s father) – deceased

Ralph (uncle) – deceased

Two surviving children

Sally (1<sup>st</sup> cousin)

Betsy (1<sup>st</sup> cousin)

John (uncle) – deceased

One surviving child

Greg (1<sup>st</sup> cousin)

One deceased child

Howard (1<sup>st</sup> cousin)

Two children surviving

Mark (1<sup>st</sup> cousin once removed)

Lila (1<sup>st</sup> cousin once removed)

The Paternal ½ of the estate goes 1/3 each to Sally, Betsy, and Greg. They are the three in the nearest generation. Howard’s children do not receive a share because they are another level down.

The division may not be at the same level for the maternal and paternal sides. One side there may be aunts the other side didn’t have the same longevity and the closest heirs are at the level of 1<sup>st</sup> cousins. Nothing wrong with that kind of distribution.

**What happens if one side of the family completely dies out?** The estate will be distributed all to the side where there is the nearest kindred. HOWEVER, the Registrar cannot make that determination it has to be made by the court.

**Registrar note: this estate goes formal so the court can make the determination that the estate would be distributed all to one side of the decedent’s family.**

**FINALLY**, see MN Statutes 524.2-103(5) in part it says;

If no surviving descendant,

No parents,

No descendant of a parent

No grandparent

No descendant of a grandparent

**“ . . . to the next of kin in equal degree, except that where there are two or more collateral kindred in equal degree claiming through *different* ancestors, those who claim through the nearest ancestor shall take to the exclusion of those claiming through an ancestor more remote. (Italics added for emphasis).**

You are still dividing the family into the maternal and paternal sides but the farther out you have to go to find an heir in the end it will be only the one(s) with the closest degree of kinship that will take.

**Registrar note: this estate would go formal so the court can determine if the heirship is correct but also whether or not more searching needs to be done and direct the personal representative to hire search firms other persons to further the pursuit of the heirs.**

If no kin can be located see MN Statutes 524.2-105, which is only one sentence long,

**“If there is no taker under the provisions of this article, the intestate estate passes to the state.”**

This what is called **escheat**.

**Registrar’s note: the Registrar does not have the authority to determine that decedent died with no heirs. This determination needs a court order based on testimony with a hearing before the court. A decree of distribution will be needed to assign the estate assets to the State of Minnesota.**

(I believe this is because there would be the required published notice BEFORE such a determination is made. Also this would most likely be a formal supervised administration with a final hearing before the court on the account with another opportunity for the court to require published notice – most likely 3 weeks.)