





Probate and End of Life Planning

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Roadmap

-  Power of attorney and guardianship
-  Probate definitions
-  Small Estates
-  Larger Estates

Power of Attorney and

Power of attorney is a document a person can choose to sign to name a substitute decision-maker for situations in the future when they might not be able to make decision for themselves. There are POAs for healthcare and for finances. Michigan Legal Help has a DIY power of attorney for healthcare.

Guardianship is a court process to ask a judge to name a person as a substitute decision-maker. This happens if a person has lost the capacity to make their own decisions. It is power over healthcare and personal matters. Conservatorship is a similar process to cover financial matters.

In the wrong hands, power of attorney can be used to abuse or exploit someone. Never give POA materials to someone and leave them with the impression that it is ok to draft a POA on behalf of someone else.

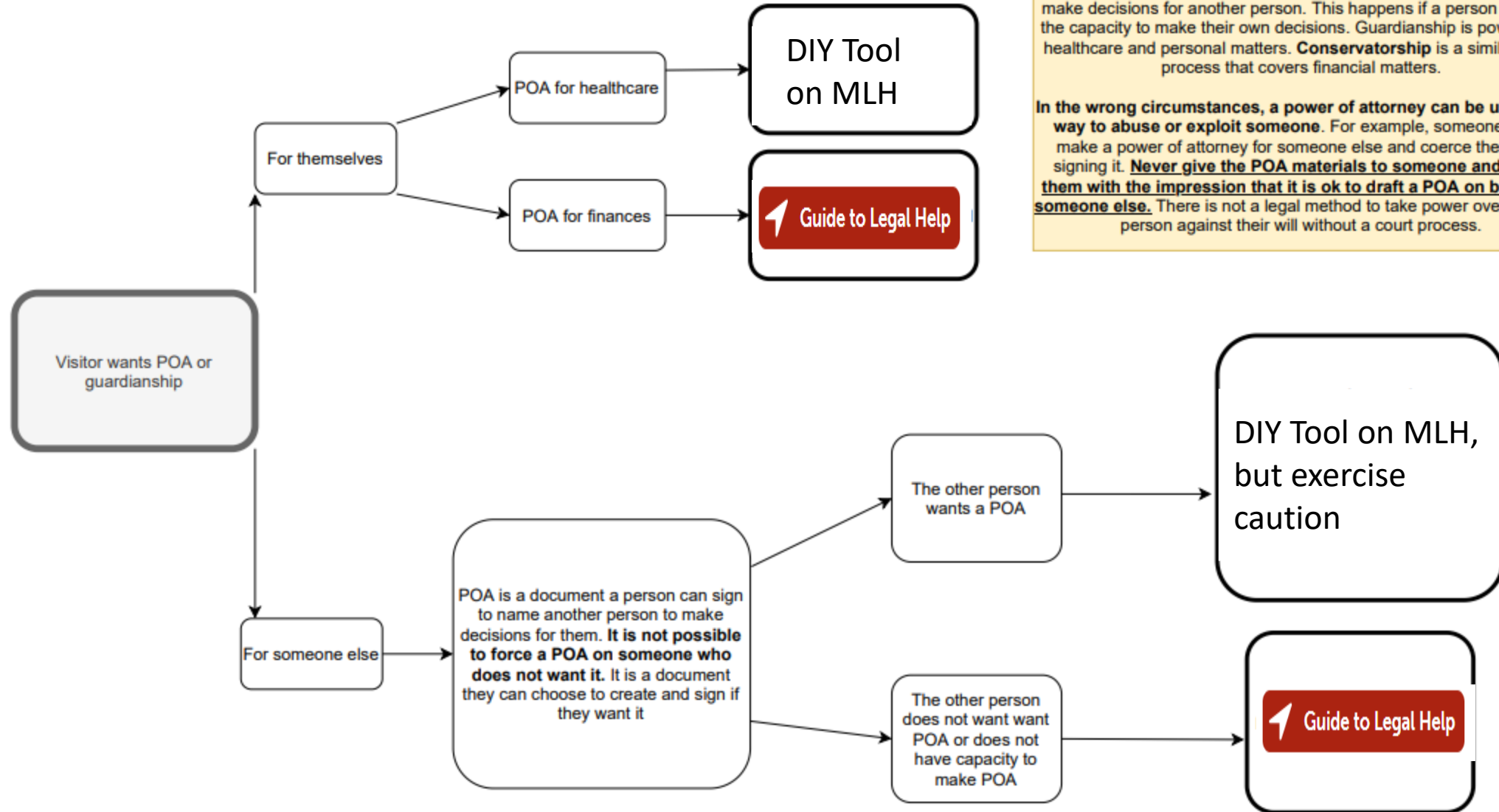
Power of Attorney and Guardianship

Definitions and an Important Safety Note:

Power of attorney is a document a person can choose to sign to name a substitute decision-maker for situations in the future when they might not be able to make decisions for themselves, for example in a future medical emergency. There are POAs for healthcare and for finances.

Guardianship is a court process to ask a judge to name a person to make decisions for another person. This happens if a person has lost the capacity to make their own decisions. Guardianship is power over healthcare and personal matters. **Conservatorship** is a similar court process that covers financial matters.

In the wrong circumstances, a power of attorney can be used as a way to abuse or exploit someone. For example, someone could make a power of attorney for someone else and coerce them into signing it. **Never give the POA materials to someone and leave them with the impression that it is ok to draft a POA on behalf of someone else.** There is not a legal method to take power over another person against their will without a court process.



Probate Definitions

Estate

Property that someone leaves behind when they die. This can include real property (houses and land) and personal property (cars, furniture, money).

Decedent

The person who died.

Probate

The court process of distributing someone's property after they die. There are also non-probate processes to distribute property.

Heirs

People who inherit property from the person who died.

Non-probate transfers

Non-probate transfers are ways to distribute property without using a court process. Many of these require advanced planning. Some common examples are:

- Lady bird deeds, sometimes called transfer on death deeds
- Jointly owned property with rights of survivorship (common in real estate and bank accounts)
- Some kinds of trusts
- Retirement accounts that pass according to plan documents

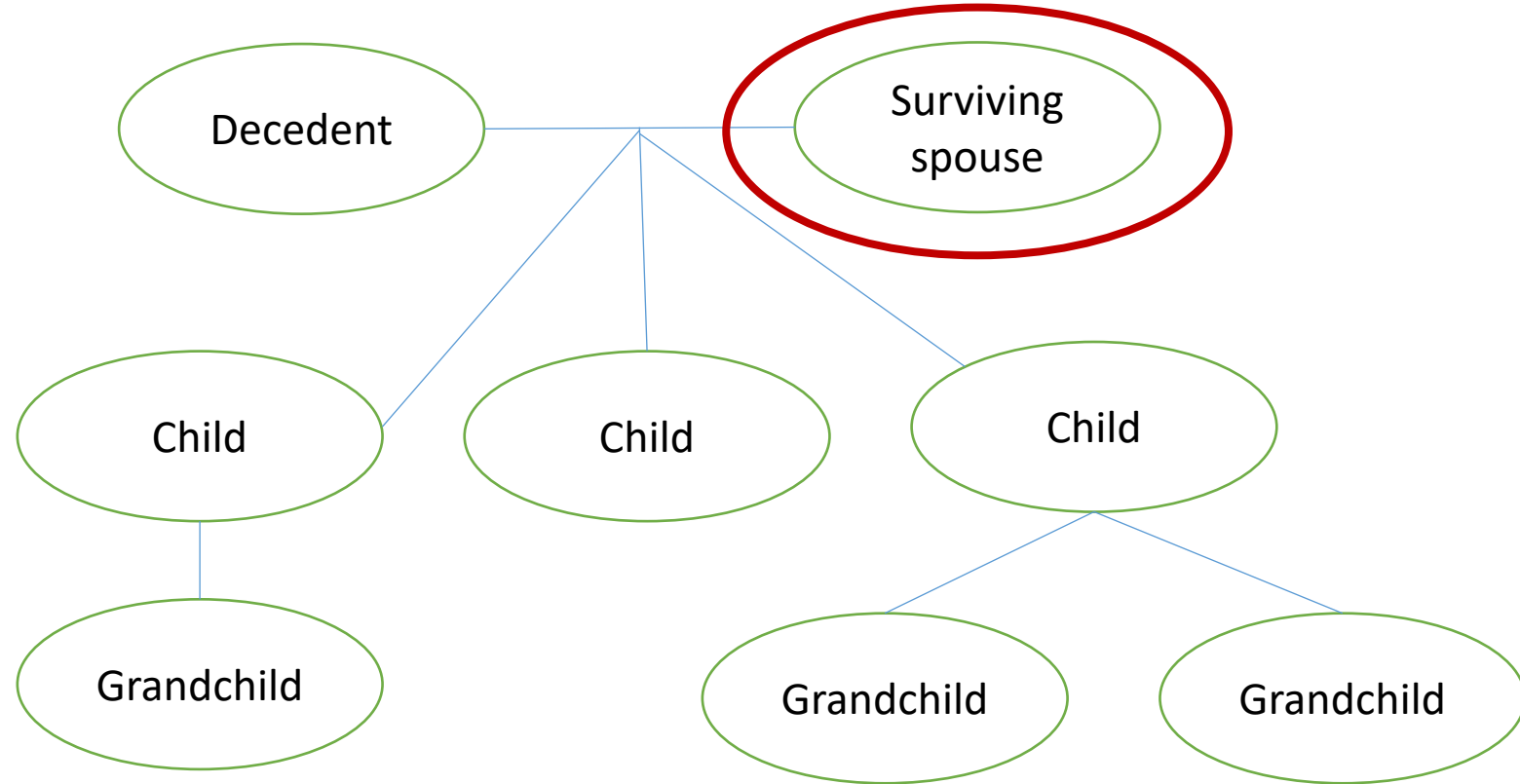
If there is any property left in the estate after non-probate transfers the heirs will need to use either the small estates process or a court probate process to distribute property.

Who Can Inherit?

First, funeral and burial expenses are paid. If they have not been prepaid by the decedent any person who paid those expenses is entitled to be paid out of the estate. Then the Michigan inheritance formula says who will inherit.

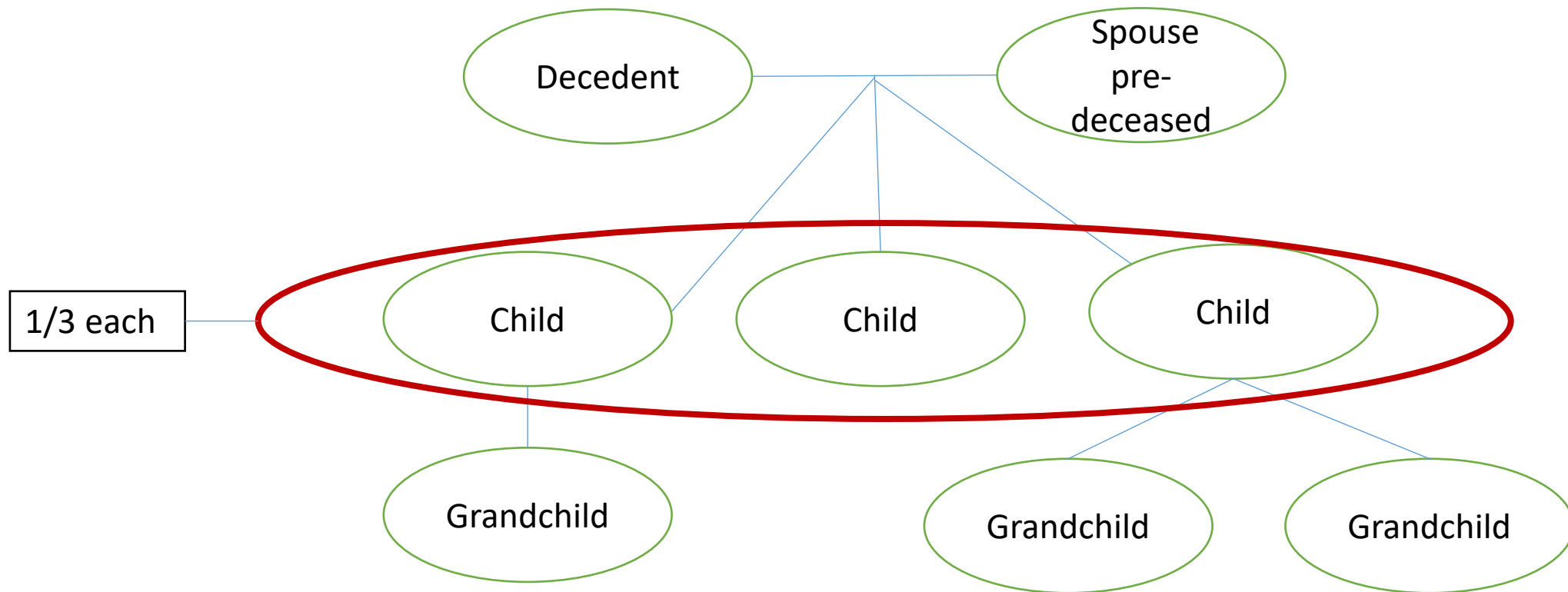
Who Can Inherit?

If there is a surviving spouse, that person inherits all the property.



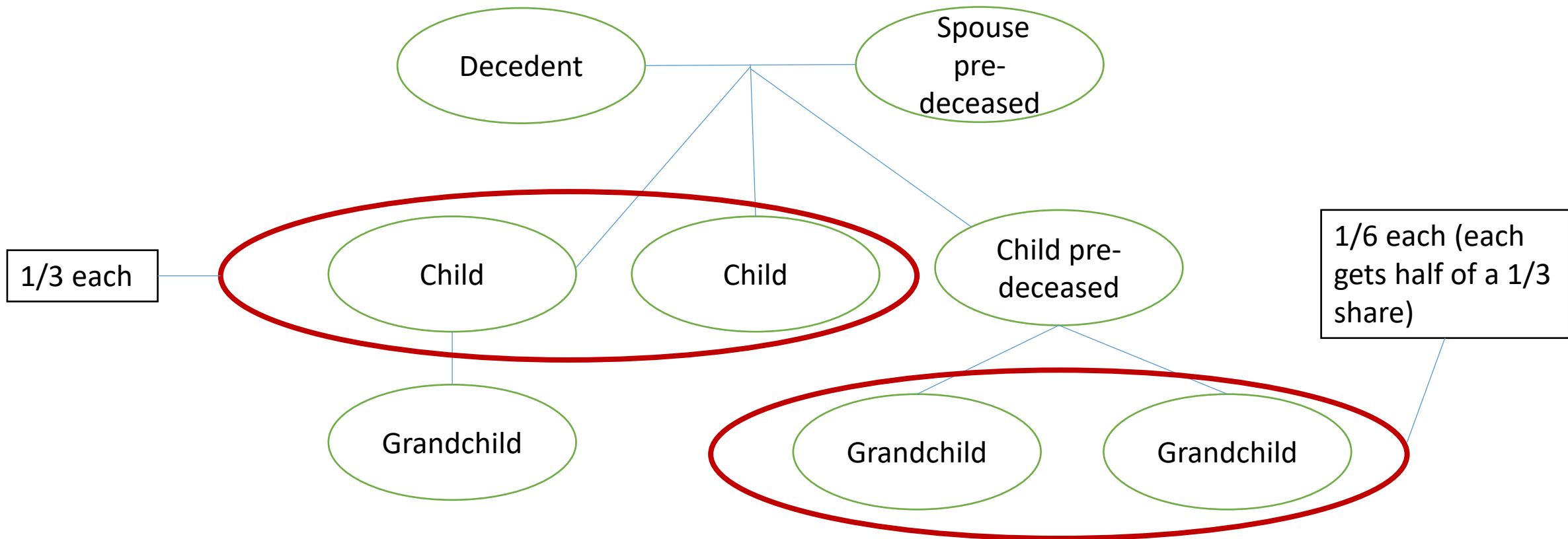
Who Can Inherit?

If there is **no** surviving spouse, that person's descendants inherit. If all the children are still living they will split the property equally



Who Can Inherit?

If any of the children died before the decedent, that person's children will split their parent's share equally



Who Can Inherit?

If there are no living surviving spouse or descendants (children or grandchildren),

- (1) Property is split between the decedent's parents equally or to one parent if there is only one surviving parent.
- (2) If both parents pre-deceased then the property will go to their descendants, starting with the decedent's siblings.

Small Estates: When Is It Used?

There are a few processes available to help people handling smaller estates distribute property either without filing in court or using a very simplified court process.

A small estate must be worth \$25,000 or less as of January 1, 2022. The amount was \$24,000 from 2020-2021. There are also some other considerations when deciding whether to use this process.

- Is there an argument over who should get the property? Small estates is not a good option if family members disagree about who has a right to property.
- Do you want to follow a will? If the decedent left a will that you want to follow, you must file a formal or informal probate case to distribute property according to a will.

Small Estates

MLH tools cover three processes:

- **Transfer by affidavit:** a signed, notarized form used if there is no real estate
- **Petition and Order for Assignment:** a simplified court filing that must be used if there is real estate
- **Certification from the Heir to a Vehicle:** a Secretary of State form that can be used in combination with either of the above processes

Small Estates: Transfer by

This is not a court process, but it uses a court-approved form called an [Affidavit of Decedent's Successor for Delivery of Certain Assets Owned by Decedent](#) (PC 598)

This form **can only be used if there is no real property** (houses or land) in the estate.

An heir signs the form in front of a notary. If there is more than one heir there is a place to list each, and the percentage of the estate they are entitled to.

Present the document to banks and any other entities or people who have the decedent's property to ask them to release the property.

A tip on notaries: check local copy/print shops for notaries outside of typical business hours!

Small Estates: Petition and Order for Assignment

This is simplified court process, that it uses a court-approved form called a [Petition for Assignment](#) (PC 556m)

This form has a little more detail than the transfer by affidavit. The petitioner needs to list a description and value of each piece of real or personal property. It also specifically lists who gets what property.

The petitioner signs the form and files it in court. The judge will sign an [Order for Assignment](#). This may happen the same day they file or they may need to come back to get it.

The heirs will need a certified copy of the order in order to access property. The fee for a certified order varies, but it is usually in \$15-\$20.

Small Estates: Transferring a

The [Certification from the Heir to a Vehicle](#) is a Secretary of State form that can be used in combination with either of the other two small estates processes.

This process can be used for more than one car but the total value of all vehicles in the estate must be \$60,000 or less.

The heir signs a statement saying that they are the person entitled to inherit the vehicle and that the estate will not be probated in formal or informal probate.

Larger Estates Overview

A case can be filed as a formal or informal probate case.

Informal probate cases are done in front of a probate register. There are fewer steps than formal probate cases but they can still be complicated. It is **always unsupervised**.

Formal probate cases have more steps and happen in front of a probate judge. It **can be supervised or unsupervised**. Supervision is when the judge more actively oversees activity in the estate. You can ask for this when filing the probate case or after it has started.



[Guide to Legal help](#)

Questions and Contact Info

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