

## CHAPTER ~~1~~ 2.

### DESCENT AND DISTRIBUTION.

**Drafting note: Provisions dealing with the rights of married persons that are in existing Chapter 1 of Title 64.1 will be relocated to proposed Article 1 of Chapter 3 of Subtitle II of Title 64.2.**

~~§ 64.1-1~~ 64.2-200. Course of descents generally; right of Commonwealth if no other heir.

~~When~~A. The real estate of any person having title to any real estate of inheritance shall die intestate as to such estate, it shall descend and pass in parcenary to such of his kindred, male and female, decedent not effectively disposed of by will descends and passes by intestate succession in the following course:

~~First~~1. To the surviving spouse of the ~~intestate decedent~~, unless the ~~intestate decedent~~ is survived by children or their descendants, one or more of whom are not children or their descendants of the surviving spouse, in which case, two-thirds of ~~such the~~ estate ~~shall pass descends and passes~~ to ~~all the intestate's decedent's~~ children and their descendants, and ~~the remaining~~ one-third of ~~such the~~ estate ~~shall pass descends and passes~~ to the ~~intestate's~~ surviving spouse.

~~Second~~2. If there ~~be is~~ no surviving spouse, then the ~~whole shall go estate descends and passes~~ to ~~all the intestate's decedent's~~ children and their descendants.

~~Third~~3. If there ~~be is~~ none ~~such of the foregoing~~, then to ~~his or her father and mother the decedent's parents, or to the survivor surviving parent.~~

~~Fourth~~4. If there ~~be is~~ none ~~such of the foregoing~~, then to ~~his or her the decedent's~~ brothers and sisters, and their descendants.

~~Fifth~~5. If there ~~be is~~ none ~~such of the foregoing~~, then ~~one moiety shall go one-half of the estate descends and passes~~ to the paternal, ~~the other to the kindred and one-half descends and passes to the~~ maternal kindred, of the ~~intestate, decedent~~ in the following course:

~~Sixth~~a. First to the grandfather and grandmother To the decedent's grandparents, or to the survivor surviving grandparent.

~~Seventh~~b. If there ~~be is~~ none ~~of the foregoing~~, then to the ~~decedent's~~ uncles and aunts, and their descendants.

~~Eighth~~c. If there ~~be is~~ none ~~such of the foregoing~~, then to the ~~great grandfathers or great grandfather, and great grandmothers or great grandmother decedent's great-grandparents.~~

~~Ninth~~d. If there ~~be is~~ none ~~of the foregoing~~, then to the brothers and sisters of the ~~grandfathers and grandmothers decedent's grandparents,~~ and their descendants.

~~Tenth~~e. And so on, in other cases, without end, passing to the nearest lineal ancestors, and the descendants of such ancestors.

~~Eleventh~~B. If there ~~be are either~~ no ~~surviving~~ paternal kindred ~~the whole shall go to the or no surviving~~ maternal kindred, ~~and if there be no maternal kindred, the whole shall go to the paternal kindred,~~ the whole estate ~~descends and passes~~ to the paternal or maternal ~~kindred who~~

survive the decedent. If there ~~be~~ are neither maternal nor paternal kindred, the whole ~~shall go to the kindred of the husband or wife, in the like course~~ estate descends and passes to the kindred of the decedent's most recent spouse, if any, provided that the decedent and the spouse were married at the time of the spouse's death, as if such ~~husband or wife~~ spouse had died intestate and entitled to the estate.

C. If there is no other heir of a decedent's real estate, such real estate is subject to escheat to the Commonwealth in accordance with Chapter 10 (§ 55-168 et seq.) of Title 55.

**Drafting note: Primarily technical changes to modernize language. Proposed subsection C, providing for the escheat of real estate if no other heirs exist, is new language and is designed to mirror existing § 64.1-12 which deals with personal property accruing to the Commonwealth if no other heirs exist.**

§ ~~64.1-11~~ 64.2-201. Distribution of personal estate; ~~right of Commonwealth if no other distributee.~~

~~When any person shall die intestate as to his~~A. The surplus of the personal estate or any part thereof ~~of any decedent, the surplus ( after payment of funeral expenses, charges of administration, and debts, and~~ subject to the provisions of Article ~~5-1 2~~ (§ ~~64.1-151-1~~ 64.2-309 et seq.) of Chapter ~~6 of this title~~), ~~after payment of funeral expenses, charges of administration and debts, shall pass and be distributed to and among~~ 3, ~~not effectively disposed of by will passes by intestate succession and is distributed to~~ the same persons, and in the same proportions, ~~to whom and in which~~ as real estate is directed to descend descends pursuant to § 64.2-200. ~~However, if the intestate was married, the surviving spouse shall be entitled to one third of such surplus, if the intestate left surviving children or their descendants, one or more of whom are not children or descendants of the surviving spouse. If no such children or their descendants survive, the surviving spouse shall be entitled to the whole of such surplus.~~

B. If there is no other distributee of a decedent's personal estate, such personal estate shall accrue to the Commonwealth.

**Drafting note: Relocated from existing § 64.1-11 with technical changes to modernize language. Existing § 64.1-12 is relocated to proposed subsection B with technical changes.**

§ ~~64.1-2~~ 64.2-202. How collaterals of half blood inherit.

~~Collaterals of the half blood shall inherit only half so much as those of the whole blood.~~

**Drafting note: Relocated to proposed § 64.2-202.**

§ ~~64.1-3~~ 64.2-202. When ~~parties~~ persons take per capita and when per stirpes; collaterals of the half blood.

~~Whenever those entitled to partition are all in the same degree of kindred to the intestate, they shall take per capita or by persons; and when, a part of them being dead and a part living, the issue of those dead have right to partition, such issue shall take per stirpes or by stocks, that is to say, the shares of their deceased parents.~~ A. A decedent's estate, or each half portion of such estate when division is required by subdivision A 5 of § 64.2-200, shall, except when otherwise

provided in subdivision A 1 of § 64.2-200, be divided into as many equal shares as there are (i) heirs and distributees who are in the closest degree of kinship to the decedent and (ii) deceased persons, if any, in the same degree of kinship to the decedent who, if living, would have been heirs and distributees and who left descendants surviving at the time of the decedent's death. One share of the estate or half portion thereof shall descend and pass to each such heir and distributee and one share shall descend and pass per stirpes to such descendants.

B. Notwithstanding the provisions of subsection A, collaterals of the half blood shall inherit only half as much as those of the whole blood.

**Drafting note: Technical changes to modernize language; changes do not affect the share of an estate taken by an heir. Subsection B consists of the language relocated from existing § 64.1-2 with technical changes.**

~~§ 64.1-4. 64.2-203. When alienage of ancestor not to bar inheritance rights of certain individuals.~~

~~In making title by descent, it shall be no bar to a party that any ancestor, whether living or dead, through whom he derives his descent from the intestate; A. Except as otherwise provided by law, no person is barred from inheriting because such person or a person through whom he claims his inheritance is or has been an alien.~~

B. A person who is related to the decedent through two lines of relationship is entitled to only a single share based on the relationship that would entitle him to the larger share.

**Drafting note: The language of existing § 64.1-4, which is now proposed subsection A, has been expanded to provide that aliens can inherit through intestate succession. Existing § 64.1-4 only provides that the fact that the ancestor of a person who takes through intestate succession is or was an alien does not preclude inheritance, but is silent as to the alienage of the person himself. This is not, however, an expansion of Virginia law as aliens may acquire property by descent pursuant to § 55-1. Subsection B consists of the language relocated from existing § 64.1-6.1. There are also technical changes to modernize language.**

~~§ 64.1-5.~~

**Drafting note: Repealed by Acts 1978, c. 647.**

~~§ 64.1-6.~~

**Drafting note: Repealed by Acts 1978, c. 647.**

~~§ 64.1-6.1. Persons related to decedent through two lines.~~

~~A person who is related to the decedent through two lines of relationship is entitled to only a single share based on the relationship which would entitle him to the larger share.~~

**Drafting note: Relocated to proposed § 64.2-203.**

~~§ 64.1-7.~~

**Drafting note: Repealed by Acts 1978, c. 647.**

~~§ 64.1-7.1.~~

**Drafting note: Repealed by Acts 1994, c. 919.**

~~§ 64.1-8.~~

**Drafting note: Repealed by Acts 1978, c. 647.**

~~§ 64.1-8.1~~ 64.2-204. Afterborn heirs.

Relatives of the decedent conceived before his death but born thereafter, and children resulting from assisted conception born after decedent's death who are determined to be relatives of the decedent as provided in Chapter 9 (§ 20-156 et seq.) of Title 20, shall inherit as if they had been born during the lifetime of the decedent.

**Drafting note: No change.**

~~§ 64.1-9.~~

**Drafting note: Repealed by Acts 1970, c. 568.**

~~§ 64.1-10~~ 64.2-205. Right of entry or action for land not affected by descent cast.

The right ~~of to make~~ entry on or bring an action ~~for to recover~~ land ~~shall is~~ not ~~be~~ tolled or defeated by descent cast.

**Drafting note: Technical changes intended to make language consistent with language used in §§ 8.01-236 and 8.01-237 that establish the applicable statute of limitations for such actions.**

~~§ 64.1-12. Right of Commonwealth, if no other distributee.~~

~~To the Commonwealth shall accrue all the personal estate of every decedent, of which there is no other distributee.~~

**Drafting note: Relocated to proposed § 64.2-201.**

~~§ 64.1-17~~ 64.2-206. ~~In division of estate of intestate, advancements to be~~ Advancements brought into hotchpot.

When ~~any the~~ descendant of a ~~person dying intestate as to his estate, or any part thereof,~~ decedent receives any property as an advancement from the decedent during the decedent's lifetime, or under his the decedent's will, any estate, real or personal, by way of advancement, and he, or any the descendant, or any descendant of his, ~~shall come into the partition and is also to receive a distribution of the any portion of the decedent's intestate estate with the other pareeners and distributees, such, real or personal, the advancement shall be brought into hotchpot with the whole intestate estate, real and personal, descended or distributable, and thereupon such party shall be~~ and the descendant is entitled to his proper portion of the entire intestate estate, real and personal including such advancement.

**Drafting note: Technical changes to modernize language.**