

	GEORGIA DIVISION OF FAMILY AND CHILDREN SERVICES		
	MEDICAID POLICY MANUAL		
	Chapter:	2300	Effective Date:
Policy Title:	Inheritances and Unprobated Estates		
Policy Number:	2320	Previous Policy Update:	MT 59

REQUIREMENTS

An ownership interest in an unprobated estate may be a resource if any one of the following conditions is met:

- The individual is an heir or relative of the deceased
- The individual receives any income from the property
- The individual has acquired rights in the property due to the death of the deceased under state intestacy laws

BASIC CONSIDERATIONS

There is an ownership interest in an unprobated estate if one of the following conditions is met:

- Documents such as a will or court record indicate an individual is an heir to property of a deceased individual.
- An individual has use of a deceased's property or receives income from it.
- Documents establish or the individual alleges a relationship between himself and the deceased that awards the individual a share in the distribution of the deceased's property under state intestacy laws and the inheritance, use of income and distribution are uncontested.

Any inheritance becomes a resource the month after the month of receipt. Refer to Section [2405](#), Treatment of Income, to determine if an inheritance is income in the month of receipt.

PROCEDURES

When a relative of an A/R dies intestate, use Georgia intestate laws to determine the A/R's share until the estate goes to probate court.

Exclude an interest in an unprobated estate (will or no will) from the date the estate goes to probate court. While in probate, check monthly to determine the status of the case until the case is settled; then determine CMV of A/R's share of the estate.

PROCEDURES (cont.)

Document the case as applicable with the copy of the following:

- an inheritance or relationship document or signed statement alleging a relationship
- evidence of income from the property
- the individual's signed statement concerning his/her use of the property and whether any factor is contested.

Georgia Intestacy Laws

WILLS, TRUST, AND ESTATES
ARTICLE 4
ACKNOWLEDGEMENTS OF SERVICE

Effective date- This article became effective July 1, 1986.

Editor's notes - Ga. L. 1986, P.436, Sec. 2, not codified by the General Assembly, provided: "This Act shall become effective July 1, 1986, and shall apply to acknowledgements filed for record on or after its effective date."

53-3-80. Acknowledgement of service to be attested.

No acknowledgement of service in any proceeding relating to the probate of wills shall be valid unless it is attested by a notary public or the clerk of the probate court. (Code 1981, Sec. 53-3-80, enacted by Ga. L. 1986, p.436.Sec. 1)

CHAPTER 4
DESCENT AND DISTRIBUTION

Article 1**General Provision**

Sec. 53-4-2. Rules on inheritance generally.

Sec. 53-4-3. Inheritance by husband, children, and descendants of intestate (Repealed).

Sec. 53-4-4. Inheritance by illegitimates and their offspring.

RESARCH REFERENCES

ALR. - Statutory or constitutional provision allowing widow but not widower to take against will and receive dower interests, allowances, homestead rights, or the like as denial of equal protection of law, 18 ALR 4th 910

PROCEDURES (cont.)**Georgia Intestacy Laws (cont.)****ARTICLE 1
GENERAL PROVISIONS****53-4-2. Rules of inheritance generally.**

The following rules shall determine who are the heirs at law of a deceased person:

(1) Upon the death of the husband or wife without lineal descendants, the surviving spouse is the sole heir and upon payment of that deceased spouse's debts, if any, may take possession of the estate without administration;

(2) If, upon the death of the husband or wife, there are children or representatives of deceased children, the surviving spouse shall have a child's part, unless the shares exceed four in number in which case, the surviving spouse shall have one-fourth part of the estate and the children shall have three-fourths' part of the estate; and the surviving spouse and children shall take per capita but the descendants of the children shall take per stirpes. In any case in which a surviving spouse is entitled to the year's support and maintenance under Chapter 5 of title 53, the amount of such support and maintenance shall not be includable in computing the amount to which that surviving spouse is entitled under this paragraph. No election by the surviving spouse shall be necessary to entitle that spouse to the portion of the estate allowed by this paragraph, but that surviving spouse shall be entitled thereto as a matter of law unless that spouse renounces such portion, in whole or in part, within nine months after death of the other spouse;

NOTE: If a spouse died prior to 7/85, the surviving spouse is entitled to a minimum of 1/5 of the estate.

The 1985 amendment effective July 1, 1985, rewrote paragraph (1) and (2) formerly relating to heirs upon death of the husband, would apply to all cases in which a person dies intestate on or after July 1, 1985.

(3) Whenever the husband or wife of a deceased person is under the age of 18 years and entitled to a share in the estate of the deceased husband or wife, he or she shall be entitled to take and hold such share without the intervention of a guardian or other trustee.

(4) Children shall stand in the first degree from the intestate and inherit equally all property of every description accounting for advancements as provided in Article 3 of this chapter. Posthumous children shall stand upon the same footing with children in being upon all questions of inheritance. The lineal descendants of children shall stand in the place of their deceased parents, but in all cases of inheritance from a lineal ancestor the distribution is per stirpes and not per capita;

PROCEDURES (cont.)**Georgia Intestacy Laws (cont.)**

- (5) Brothers and sisters of the intestate shall stand in the second degree and shall inherit if there is no surviving spouse, child, or representative of a child. The half-blood, both on the paternal and maternal side, shall inherit equally with the whole blood. Brothers and sisters of the whole blood, brothers and sisters of the half blood and brothers and sisters adopted by a mutual parent of the intestate shall stand in the same degree and inherit equally from each other. The children or grandchildren of deceased brothers and sisters shall represent and stand in the place of their deceased parents but there shall be no representation further than this among collaterals. If all the brothers and sisters are dead at the time of death of the intestate, then the distribution shall be between the nephews and nieces per capita; and if any of the nephews and nieces are dead, leaving children, distribution shall be made as though the nephews and nieces were alive, the children of the deceased nephew or niece standing in the place of the parent;
- (6) The father and mother inherit equally with brothers and sisters and stand in the same degree;
- (7) In all degrees more remote than those specified in the paragraphs (1) through (6) of this code section, the paternal and maternal next of kin shall stand on an equal footing;
- (8) The grandfathers and grandmothers of the intestate shall stand next in degree;
- (9) Uncles and aunts shall stand next in degree with the children of any deceased uncle or aunt inheriting in the place of their parent;
- (10) First cousins shall stand next in degree; and
- (11) The more remote degrees of kinship shall be determined by counting the steps from the claimant to the closest common ancestor and from the ancestor to the intestate. The sum of the two shall be the degree of kinship.

Term uncle as used in this section is limited to those persons who have a common ancestor with the niece or nephew.