

Document: O.C.G.A. Section 53-2-1

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**OFFICIAL CODE OF GEORGIA ANNOTATED TITLE 53.
WILLS, TRUSTS, AND ADMINISTRATION OF
ESTATES CHAPTER 2. DESCENT AND
DISTRIBUTION ARTICLE 1. GENERAL
PROVISIONS Section 53-2-1. Rules of inheritance when
decedent dies without will; effect of abandonment of
child**

Section **53-2-1**. Rules of inheritance when
decedent dies without will; effect of abandonment

of child

(a) As used in this Code section, the term:

(1) "Abandon" means that a parent of a minor child, without justifiable cause, fails to communicate with the minor child, care for the minor child, and provide for the minor child's support as required by law or judicial decree for a period of at least one year immediately prior to the date of the death of the minor.

(2) "Abandonment" means the act of abandoning.

(3) "Minor child" means a person who is less than 18 years of age.

(b) For purposes of this Code section:

(1) Children of the decedent who are born after the decedent's death are considered children in being at the decedent's death, provided they were conceived prior to the decedent's death, were born within ten months of the decedent's death, and survived 120 hours or more after birth; and

(2) The half-blood, whether on the maternal or paternal side, are considered equally with the whole-blood, so that the children of any common parent are treated as brothers and sisters to each other.

(c) Except as provided in subsection (d) of this Code section, when a decedent died without a will, the following rules shall determine such decedent's heirs:

(1) Upon the death of an individual who is survived by a spouse but not by any child or other descendant, the spouse is the sole heir. If the decedent is also survived by any child or other

descendant, the spouse shall share equally with the children, with the descendants of any deceased child taking that child's share, per stirpes; provided, however, that the spouse's portion shall not be less than a one-third share;

(2) If the decedent is not survived by a spouse, the heirs shall be those relatives, as provided in this Code section, who are in the nearest degree to the decedent in which there is any survivor;

(3) Children of the decedent are in the first degree, and those who survive the decedent shall share the estate equally, with the descendants of any deceased child taking, per stirpes, the share that child would have taken if in life;

(4) Parents of the decedent are in the second degree, and those who survive the decedent shall share the estate equally;

(5) Siblings of the decedent are in the third degree, and those who survive the decedent shall share the estate equally, with the descendants of any deceased sibling taking, per stirpes, the share that sibling would have taken if in life; provided, however, that, subject to the provisions of paragraph (1) of subsection (f) of Code Section 53-1-20, if no sibling survives the decedent, the nieces and nephews who survive the decedent shall take the estate in equal shares, with the descendants of any deceased niece or nephew taking, per stirpes, the share that niece or nephew would have taken if in life;

(6) Grandparents of the decedent are in the fourth degree, and those who survive the decedent shall share the estate equally;

(7) Uncles and aunts of the decedent are in the fifth degree, and those who survive the decedent shall share the estate equally, with the children of any deceased uncle or aunt taking, per stirpes, the share that uncle or aunt would have taken if in life; provided, however, that, subject to the provisions of paragraph (1) of subsection (f) of Code Section 53-1-20, if no uncle or aunt of the decedent survives the decedent, the first cousins who survive the decedent shall share the estate equally; and

(8) The more remote degrees of kinship shall be determined by counting the number of steps in the chain from the relative to the closest common ancestor of the relative and decedent and the number of steps in the chain from the common ancestor to the decedent. The sum of the steps in the two chains shall be the degree of kinship, and the surviving relatives with the lowest sum shall be in the nearest degree and shall share the estate equally.

(d) Except as provided in Code Sections 19-7-1 and 51-4-4 for the right of recovery for the wrongful death of a child, when a minor child dies without a will, a parent who willfully abandoned his or her minor child and has maintained such abandonment shall lose all right to intestate succession to the minor child's estate and shall not have the right to administer the minor child's estate. A parent who has been deprived of the custody of his or her minor child under an order of a court of competent jurisdiction and who has substantially complied with the support

requirements of the order shall not be barred from inheriting from the minor child's estate.

(e) For cases in which abandonment is alleged, the moving party shall file a motion with the probate court requesting the judge to determine the issue of abandonment and shall serve all parties as set forth in subsection (f) of this Code section. A hearing shall be conducted and all parties shall have the opportunity to present evidence regarding the party's relationship with the decedent. The burden of proof to show an abandonment is on the person asserting the abandonment by clear and convincing evidence.

(f) All parties to a motion filed pursuant to subsection (e) of this Code section shall be served in accordance with Chapter 11 of this title. If a party cannot be personally served and the party's interest in an estate is subject to forfeiture pursuant to subsection (d) of this Code section, the judge shall appoint a guardian ad litem for the party. If a party cannot be personally served, the citation shall also be published in the newspaper in which sheriff's advertisements are published in the county where the party was last known to reside.

(g) In the event that a parent is disqualified from taking a distributive share in the estate of a decedent under subsection (d) of this Code section, the estate of such decedent shall be distributed in accordance with subsection (c) of this Code section as though the parent had predeceased the decedent.

History

Code 1981, § **53-2-1**, enacted by Ga. L. 1996, p. 504, § 10; Ga. L. 1998, p. 1586, § 8; Ga. L. 2007, p. 210, § 2/HB 139; Ga. L. 2008, p. 324, § 53/SB 455.

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