

A Guide to Arkansas Inheritance

Table of Contents

Chapter 1: Where It All Goes	3
Chapter 2: Homestead and Other Allowances	4
Chapter 3: Dower & Curtesy	6
Chapter 4: Intestate Succession	13
Chapter 5: Relevant Statutes	15

Chapter 1: Where It All Goes

Wills, Trusts & Estates asks one question: Where does a decedent's property go when he or she dies?

A decedent's property is transferred according to a priority of distribution. Here is the order:

1. Non-Probate Transfers.

Non-probate property includes that which passes under a right of survivorship (e.g., property held in joint tenancy or tenancy by the entirety); life insurance property; interests held in a trust that are payable on death. Pages 38–39 of our casebook provide a description of non-probate transfers. More to come on these transfers later in the course.

2. Homestead and Statutory Allowances.

Most states, including Arkansas, allow a surviving spouse and minor children to take an interest in the homestead of the decedent. Arkansas also provides to the surviving spouse and minor children a small property allowance from the estate (up to a \$4,000 value) along with personal property necessary for family use and occupancy of their dwelling. *See* Chapter 2: Homestead and Other Allowances.

3. Dower (Curtesy).

Arkansas provides the surviving spouse rights to property that the decedent held during their marriage. These rights provide the surviving spouse a fractional interest of that property. *See* Chapter 3: Dower & Curtesy.

4. Creditors.

Creditors of the decedent generally take from the estate only after non-probate transfers, homestead and statutory allowances, and dower. (Note: There is an exception for dower discussed in Chapter 3.)

5. Testate Succession (Will Beneficiaries).

Property that passes under a will passes through testate succession.

6. Intestate Succession.

If property exists in the estate that does not pass under a will, it is distributed according to certain family members and relatives as set forth in a statute. *See* Intestate Succession Handout. *See* Chapter 4: Intestate Succession.

Chapter 2: Homestead and Other Allowances

Arkansas provides the surviving spouse and children under 21 years of age rights in the homestead of the decedent. Arkansas also provides a surviving spouse and minor children a statutorily set amount of property from the decedent's estate along with personal property necessary for residential dwelling. This handout and the attached statutory supplement explain these rights.

Homestead.

What are the homestead rights?

In short, homestead rights provide the surviving spouse and the decedent's children under 21¹ rights to income (rents) and profits of the decedent's homestead property. Creditors' claims to the decedent's property are inferior to these rights.

Who qualifies for the homestead rights?

To qualify for homestead rights, the surviving spouse must have been married to the decedent for longer than 1 year. If the decedent has no surviving children under age 21, the surviving spouse has the sole claim to all of the rents and profits of the homestead for his or her lifetime. If the decedent is survived by children under age 21, then until the youngest child reaches 21, the surviving spouse's share of the rents and profits is limited to one-half, and the children under age 21 share the other one-half of the rents and profits. If the surviving spouse dies before the children all turn 21, then the children under 21 are entitled to all of the rents and profits until age 21. Note that the surviving children under 21 need not be children of the surviving spouse.

What land qualifies as a homestead?

A homestead must be owned and occupied as a residential dwelling by the decedent. Caselaw provides that the decedent spouse "must actually and in good faith occupy land as a residence, before the levy of an execution, to impress it with the homestead character and to make it exempt from the levy of the execution." *Smith v. Flash TV Sales and Serv., Inc.*, 706 S.W.2d 184, 187 (Ark. App. 1986). The surviving spouse and children under 21 derive their homestead rights from the character of the property that the decedent impressed upon it.

How large may property be as a homestead?

In the case of homestead property outside of any city, town, or village, the homestead may not be reduced to less than 80 acres (but may not be more than 160 acres). In the case of homestead property within any city, town, or village, the homestead property may not be reduced to less than one-quarter acre (but may not be more than one acre).

¹ Note that for homestead purposes, the benefited children are those under the age 21 rather than 18, which is the age of majority in Arkansas for most purposes. The homestead rights reflect the concept of the homestead exemption under the Arkansas Constitution, which uses age 21. [Ark. Const. art. 9](#), § 6.

Other Allowances.

Other rights of the surviving family members that must be accounted for before distribution of the heritable estate to the heirs include:

(1) allowance of personal property

Together, the surviving spouse and minor children² take the following:

- (a) personal property having a value of \$4,000 (\$2,000 as against creditors);
- (b) whatever furniture and certain other personal property that are reasonably necessary for use and occupancy of the residence (provided the spouses were living together at the time of the decedent's death); and
- (c) a two-month sustenance allowance not exceeding \$1,000.

(2) two months of residential living and reasonable sustenance

- (a) The surviving spouse may reside in the chief residence of the decedent spouse for two months after death. (This period may be extended if dower is not assigned within the two months.)
- (b) The surviving spouse shall receive a "reasonable sustenance" for those two months.

(3) proportional share of rent from the decedent's real estate

Until dower (curtesy) rights apportioned to surviving spouse, the surviving spouse is entitled to rent from the decedent's real estate proportional to the dower or curtesy interest of that surviving spouse in that real estate.

² Note that for allowance purposes, the benefited children are those who are minors (under 18)—not those under the age of 21.

Chapter 3: Dower & Curtesy

Arkansas is one of the few remaining states that follow common law rights of dower and curtesy. Those rights provide a share of the decedent's estate to the surviving spouse. They provide priority over rights of heirs, will beneficiaries, and creditors. Let me say that again. **Rights of dower and curtesy trump all:** neither the rights of the decedent's creditors,³ the rights of beneficiaries under the decedent's will, nor the rights of heirs under intestate succession affect the surviving spouse's rights of dower or curtesy.

It is best to learn Dower & Curtesy through a big-picture perspective before honing in on the nitty-gritty details. Accordingly, this chapter is organized as follows:

I. Dower & Curtesy at a Glance	7
II. A Closer Look.....	8
III. A Much Closer Look.....	9
A. Land—if there are surviving children.....	9
B. Land—if there are not surviving children	11
C. Personal Property	12
IV. Adding in Homestead Rights.....	12

³ To be completely truthful, creditors may “affect” the quantity of property a surviving spouse takes. More on that to come. The general principle, however, is that creditors cannot bar a surviving spouse from exercising dower or curtesy rights.

I. Dower & Curtesy at a Glance

Below is a brief overview of the dower and curtesy rules under Arkansas law:

Decedent survived by spouse and one or more children—the spouse is endowed with: (1) a life estate in one-third of most real estate interests that the decedent owned at any time during the marriage; and (2) one-third of the personal property owned by the decedent at the time of death. These interests are not subject to creditors.

Decedent survived by spouse but no children—the spouse is endowed with: (1) one-half of the decedent's real property that the decedent owned at any time during the marriage; and (2) one-half of the personal property that the decedent owned at the time of death. Two important caveats apply: first, this one-half amount is reduced to one-third as against creditors of the estate; and second, if any of the real estate is an "ancestral estate," the survivor's interest in that land (either one-third or one-half) is a life estate rather than fee simple.

The above scheme may be represented in the following chart:

Dower or Curtesy Rights of Surviving Spouse		
	Surviving Child (or Descendant)	No Surviving Child (or Descendant)
Real Property	1/3 life estate of land ever seized during marriage.	1/2 fee simple of land ever seized during marriage. Creditors may reduce to 1/3.
Personal Property	1/3 absolute ownership that decedent owned at death.	1/2 absolute ownership that decedent owned at death. Creditors may reduce to 1/3.

As general background, the following principles are noteworthy:

- Dower refers to the rights of a surviving wife. Only a surviving wife can be invested (or "endowed") with dower.
- Curtesy refers to the rights of a surviving husband. Only a surviving husband can be invested (or "endowed") with curtesy.
- As of 1981, the rights of dower and curtesy under Arkansas law are equivalent rights (only the names differ).

II. A Closer Look

The basic rules of dower and curtesy vary depending upon several factors. The “basic rules” are rules that determine (1) whether a dower or curtesy right attaches to a specific property interest, and if so, (2) what the “quantity” and “quality” of the resulting dower or curtesy rights are in that property interest. (Note that “quantity” and “quality” are words for my own convenience.)

Quantity and Quality

- By “quantity,” I mean the fractional part of the property to which the surviving spouse is endowed. The quantity will be either one-half or one-third of the property affected.
- By “quality,” I mean the nature of the estate to which the surviving spouse is endowed. Under Arkansas law, a dower or curtesy interest in personal property is always absolute ownership, while a dower or curtesy interest in land may be either a life estate or fee simple ownership (depending on the circumstances).

Circumstances Affecting the Quantity and Quality

- The quantity and quality of a dower or curtesy interest will vary depending on:
 - (1) whether or not the decedent was survived by any children;
 - (2) whether any particular property interest is an interest in land (and what sort of land interest); and
 - (3) whether any particular property interest is an interest in personal property.

Creditors

- As a general matter, a surviving spouse takes the dower or curtesy interest free of claims by the decedent spouse’s creditors. (This creditor-free interest may be reduced from 1/2 to 1/3, however.)
- This creditor-free principle of dower and curtesy is important because assets that pass to intestate heirs and beneficiaries under a decedent’s *will* are subject to the valid and timely claims of the decedent’s creditors.

III. A Much Closer Look

We should now consider separately the law concerning real estate and the law concerning personal property.⁴

A. Land—if there are surviving children

If a decedent died with surviving children, then the surviving spouse is endowed with a life estate in one-third of the lands affected. In other words, the *quantity* is always one-third of the land, and the *quality* is always a life estate. See Ark. Code § 28-11-301.

Note that the decedent must be survived by at least either one child or one descendant.⁵

What lands are affected? The surviving spouse has a dower or curtesy interest in all the lands of which the decedent “was seized, of an estate of inheritance, at any time during the marriage.” This involves three distinct elements for analysis:

- (1) at some time during the marriage, the decedent must have owned an interest in the land;
- (2) the interest must have been one of which the decedent was seized; and
- (3) the interest must have been an estate of inheritance.

Let us consider these three elements more thoroughly.

First, at any moment during the marriage, did the decedent ever own an interest in any land? “During” is the key word, and you must take it literally. It does not matter whether the decedent acquired the interest in real property before or after the date of the marriage, and it does not matter whether the decedent still owned the property at the time of death (unless the spouse properly released the dower or curtesy interest or some other special rule applies). In all of these situations, the decedent owned the interest at some time during the marriage.

Only if the answer to the first question is yes—the decedent owned an interest in real estate at some time during the marriage—then go on to the second question.

Second, was the decedent “seized” of the land interest during the marriage? Recall the concept of seisin from your Property Law course. For our purposes, we will loosely translate “seized” to mean that the decedent held an ownership interest in the property

⁴ The most important statutory provisions governing dower and curtesy are embodied in Ark. Code Ann. §§ 28-11-301, 28-11-305 and 28-11-307.

⁵ For purposes of § 28-11-301, the term “child” includes the surviving issue of a child who predeceased the decedent.

that gave the decedent the right to possession. Fee simple ownership, of course, satisfies this requirement.

Note that only holding a *remainder interest* would not count as being “seized.” A remainder interest would never have entitled the decedent to present possession, so the remainder interest of a decedent would not be subject to dower or curtesy rights.⁶

Only if the answer to the second question is yes—the decedent was seized of the interest—then move to the third question.

Third, was the decedent’s interest “an estate of inheritance”? This essentially means that the interest must be an interest that can be inherited by the decedent’s heirs. A life estate (measured by the decedent’s life) is not an estate of inheritance because the estate terminates upon death. Similarly, if the decedent and another person owned real estate in joint tenancy with right of survivorship, or if the decedent and spouse owned the real estate as tenants by the entirety, the decedent’s interest was not an estate of inheritance because the survivorship feature caused the surviving tenant to become the sole owner when the decedent died, and there was nothing left in the decedent’s estate to pass by inheritance.

Implications of § 28-11-301

Some implications of these qualifications for dower may seem counterintuitive. Consider an unmarried person who acquires ownership of land, then marries, then later sells that land to a third person (without proper joinder of the spouse), and ultimately dies leaving a surviving spouse. The surviving spouse has a dower or curtesy interest in the land even though the decedent did not own any interest in it at death. At the time of marriage each spouse acquires a potential right (“inchoate” dower or curtesy) in all land of which the other spouse is seized of an estate of inheritance, and throughout the marriage each spouse acquires inchoate dower or curtesy in all land of which the other spouse subsequently (during the marriage) becomes seized of an estate of inheritance. In effect, a third party purchasing from a married seller acquires title to the land subject to the inchoate dower or curtesy claim of the seller’s spouse. For this reason, someone purchasing land in Arkansas from a married seller should require a proper waiver or release from the seller’s spouse. This requirement quickly becomes second nature to anyone who deals with title to Arkansas real estate. A spouse’s inchoate claim to dower or curtesy may, however, be extinguished if the conveyance has been of record for *seven years or more prior to the transferor spouse’s death*. See Ark. Code § 28-11-203.

⁶ Consider a conveyance of Blackacre to A for life, remainder to B: while A is alive, A is seized of an estate in Blackacre and is presently entitled to possession; B has a future interest, is not currently entitled to possession, and is therefore not seized.

B. Land—if there are no surviving children

If there are no surviving children (or descendants), the surviving spouse is entitled to a fee simple in one-half of the land of which the decedent was ever seized during marriage.⁷ See Ark. Code § 28-11-307. The three questions asked above apply here as well:

- (1) At any moment during the marriage, did the decedent ever own an interest in any land?
- (2) Was the decedent “seized” of the land (during the marriage)?
- (3) Could the decedent’s interest be inherited by the decedent’s heirs?

Important Note: There are two important subsidiary rules concerning land where the decedent has no surviving children (§ 28-11-307):

First, the one-half fraction shrinks to one-third as to any creditors of the estate. In other words, if the value of the estate is inadequate to pay all of the decedent’s creditors, only a one-third interest is subject to the dower or curtesy interest free of the claims of the decedent’s creditors.

Second, the quality of the dower or curtesy interest changes to a life estate rather than fee simple if the decedent was seized of an “ancestral estate.” The clearest examples of ancestral estates are land that the decedent inherited from a parent or land that the parent gave to the decedent as a gift.⁸

⁷ Although § 28-11-307 refers to “real estate of which the deceased person died seized,” the case law treats that phrase substantially as the equivalent of § 28-11-301’s reference to lands “whereof . . . [the decedent] was seized, of an estate of inheritance, at any time during the marriage.” In other words, you may assume that the real estate interests to which dower or curtesy attaches under § 28-11-307, where the decedent leaves no surviving children, are the same as the real estate interests to which dower or curtesy attaches under § 28-11-301, where the decedent is survived by one or more children, even though the two statutes provide different rules concerning the quantity and quality of the resulting dower or curtesy interest.

⁸ The concept of an ancestral estate is simple enough to state, but the facts surrounding the decedent’s acquisition of the land may make the determination complex. See [Earl v. Earl, 225 S.W. 289 \(Ark. 1920\)](#).

C. Personal property

Quality: The surviving spouse always takes an absolute ownership in personal property of the decedent. The quality of the interest in personal property does not change, regardless of the property source (as contrasted with a decedent's ancestral estate in land).

Quantity: The quantity that a surviving spouse takes is always based on the personal property that a decedent owned at the time of death.

Two different scenarios exist for determining the fractional quantity interest: whether the decedent did or did not leave children (or descendants):

1. Personal property—if there are surviving children

Where there are surviving children (or descendants), the surviving spouse is entitled to one-third of the personal property that the decedent owned at death. *See* Ark. Code § 28-11-305. As mentioned above: (1) the surviving spouse's ownership that attaches to the decedent's personal property is absolute; and (2) dower or curtesy attaches to the decedent's personal property that the decedent *owned at the time of death*.

2. Personal property—if there are no surviving children

Where there are no surviving children (nor descendants), the surviving spouse is entitled to one-half of the personal property that the decedent owned at death. *See* Ark. Code § 28-11-307. Important note: The one-half interest in personal property is reduced to one-third as to creditors of the estate (as is the case in with land). As mentioned above: (1) the surviving spouse's ownership that attaches to the decedent's personal property is absolute; and (2) dower or curtesy attaches to the decedent's personal property that the decedent *owned at the time of death*.

IV. Adding in Homestead Rights

How Do Dower Rights Interact with Homestead Rights?

The surviving spouse's right of dower or curtesy and the homestead right are cumulative in nature. For example, a surviving spouse may claim dower or curtesy against all of the decedent's property to which dower and curtesy apply, plus homestead rights, plus the other allowances. The surviving spouse may seek to have dower or curtesy and the homestead right set aside in the manner that will produce the greatest economic benefit.

Chapter 4: Intestate Succession

After distributing property according to non-probate transfers and homestead, statutory allowances, and dower rights, what is left? The answer is: ***the heritable estate***. From this estate creditors are paid first; then will beneficiaries; and then finally—if property exists that does not pass under a will—the heirs of the decedent. This chapter focuses on the last category of takers in the heritable estate—intestate succession by heirs of the decedent.

Property that is distributed through intestate succession passes to members of the decedent's living family according to a statutorily-set priority list. A family member's relationship to the decedent determines how much, if any, of the property the family member takes. (This makes sense: the Decedent's Great Uncle Vern should not take as much as the Decedent's Children or Wife.) This priority of distribution is contained in a statute that is called a Statute of Descent.

I. Descent

The order of priority in which the heritable estate passes to family members of the decedent is as follows:

(1) Surviving children (and the descendants of any predeceased child) divide the entire heritable estate.

(2) Surviving spouse. If there are no surviving children or descendants of children, then the surviving spouse (in addition to taking dower or curtesy) takes the entire heritable estate.

- There is, however, an exception to this rule: if the decedent was married to the surviving spouse for less than three years, the surviving spouse's share (in addition to dower or curtesy) is limited to fifty percent of the heritable estate.
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(3) Surviving parents (share the entire estate equally if both survive).

(4) Brothers and sisters (and descendants of predeceased brothers and sisters).

(5) Grandparents, uncles and aunts (and descendants of predeceased uncles and aunts).

- (6) Great grandparents, great uncles and great aunts (and descendants of predeceased great uncles and great aunts).
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- (7) Surviving spouse of marriage less than three years, OR if the spouse of the decedent has already died, persons who would have been the heirs of the *deceased spouse* (not the decedent because the decedent has no heirs!) as of the decedent's death. Let me explain. If the entire heritable estate has not passed to the heirs listed in the first six categories above, then a surviving spouse from a marriage of less than three years will inherit the remaining heritable estate. If, however, the decedent's spouse died first, then the heritable estate passes to those persons who would have been the deceased spouse's heirs as of the decedent's death (i.e., not the deceased spouse's actual heirs determined as of the date of the deceased spouse's death, but the heirs who would have been determined for the deceased spouse if he or she had died at the time of the decedent's death).
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- (8) If no one is capable of inheriting under any of the above seven categories, then the estate escheats to the county in which the decedent resided at death.

See Ark. Code §§ 28-9-214, 28-9-215.

II. Distribution

The Arkansas rules determining the individual shares taken by the members of a class of heirs are similar to those followed in many other U.S. jurisdictions. The Arkansas method comports with the most common approach, which the casebook alternatively names the “modern (American) per stirpes method,” alternatively referred to as the “per capita with representation” method.⁹

Truthfully, this method is easiest explained with a graphical representation than it is by written prose. Therefore, it will be covered in class rather than here in the handout. See also Ark. Code Ann. § 28-9-204.

⁹ Section § 28-9-205 labels this method “per stirpes” distribution as applied to heirs who take as descendants of a person who predeceases the intestate decedent.

Chapter 5: Relevant Statutes

§ 16-66-210. Homestead Exemption Act

(a) This section shall be known and may be cited as the “Homestead Exemption Act of 1981”.

(b) The homestead of any resident of this state who is married or the head of a family shall not be subject to the lien of any judgment, or decree of any court, or to sale under execution or other process thereon, except such as may be rendered for the purchase money or for specific liens, laborers' or mechanics' liens for improving the homestead, or for taxes, or against executors, administrators, guardians, receivers, attorneys for moneys collected by them, and other trustees of an express trust for moneys due from them, in their fiduciary capacity.

(c)

(1) The homestead outside any city, town, or village, owned and occupied as a residence, shall consist of no more than one hundred sixty (160) acres of land, with the improvements thereon, to be selected by the owner. The homestead shall not exceed in value the sum of two thousand five hundred dollars (\$2,500), but, in no event shall the homestead be reduced to less than eighty (80) acres, without regard to value.

(2) The homestead in any city, town, or village, owned and occupied as a residence, shall consist of not more than one (1) acre of land, with the improvements thereon, to be selected by the owner. The homestead shall not exceed the sum of two thousand five hundred dollars (\$2,500) in value, but in no event shall the homestead be reduced to less than one-quarter (1/4) of an acre of land, without regard to value.

(3) Any homestead outside any city, town, or village, owned and occupied as a residence, which is annexed to or made part of an incorporated city or town within the State of Arkansas, shall retain its exemption under subdivision (c)(1) of this section as long as the land on which it is located remains rural in nature and has a significant agricultural use.

(d) The homestead provided for in this section shall inure to the benefit of the minor children, under the exemptions provided in this section, after the demise of the parents.

§ 28-9-204. *Per Capita Taking*

Heirs will take per capita in the following circumstances:

- (1) (A) If all members of the class who inherit real or personal property from an intestate are related to the intestate in equal degree, they will inherit the intestate's estate in equal shares and will be said to take per capita.

(B) For illustration:

(i) If the intestate leaves no heirs except children, the children will take per capita and in equal shares;

(ii) If the intestate leaves no heirs except grandchildren, all the grandchildren will take per capita and in equal shares;

(iii) If the inheriting class consists solely of great-grandchildren, or any more remote descendants of the intestate who are all related to the intestate in the same degree, they will take per capita.

(C) The same rule applies to the inheritance by collateral heirs of the intestate as where, for illustration, the inheriting class consists entirely of brothers and sisters, or consists solely of nieces and nephews who are descendants of deceased brothers and sisters, or consists of any other collateral relatives of the intestate who are related to the intestate in equal degree.

(D) Likewise, where the inheriting class consists of uncles, aunts, and grandparents or great uncles, great aunts, and great grandparents who, under § 28-9-214, may constitute an inheriting class even though they represent different generations, all members of such a class who survive the intestate will take per capita and share equally.

- (2) If the members of the inheriting class are related to the intestate in unequal degree, those in the nearer degree will take per capita or in their own right, and those in the more remote degree will take per stirpes or through representation as provided in § 28-9-205.

§28-9-214. Descent Table

The heritable estate of an intestate as defined in § 28-9-206 shall pass as follows upon the intestate's death:

(1) First, to the children of the intestate and the descendants of each child of the intestate who may have predeceased the intestate. The children and descendants will take per capita or per stirpes according to §§ 28-9-204 and 28-9-205.

(2) Second, if the intestate is survived by no descendant, to the intestate's surviving spouse unless the intestate and the surviving spouse had been continuously married less than three (3) years next preceding the death of the intestate, in which event the surviving spouse will take merely fifty percent (50%) of the intestate's heritable estate;

(3) Third, if the intestate is survived by no descendant or spouse, to the intestate's surviving parents, sharing equally, or to the sole surviving parent if only one (1) of them shall be living;

(4) Fourth, if the intestate is survived by no descendant but is survived by a spouse to whom the intestate has been continuously married less than three (3) years next preceding the death of the intestate, the entire portion of his or her heritable estate which does not pass to the surviving spouse under subdivision (2) of this section shall pass to the intestate's surviving parents, sharing equally, or to the sole surviving parent if only one (1) of them shall be living;

(5) Fifth, if the intestate is survived by no descendant or parent, then all of his or her heritable estate which under subdivisions (3) and (4) of this section would have vested in the intestate's surviving parent or parents will pass to the intestate's brothers and sisters and the descendants of any brothers and sisters of the intestate who may have predeceased the intestate, such brothers, sisters, and descendants taking per capita or per stirpes according to §§ 28-9-204 and 28-9-205;

(6) Sixth, if the intestate is survived by no descendant, then in respect to such portion of his or her heritable estate as does not pass under subdivisions (2)-(5) of this section, the inheriting class will be the surviving grandparents, uncles, and aunts of the intestate. In this situation, each surviving grandparent shall take the same share as each surviving uncle and aunt, and no distinction shall be made between the paternal and maternal sides. In other words, a maternal grandparent, uncle, or aunt shall take the same share as a paternal grandparent, uncle, or aunt and vice versa. If any uncle or aunt of the intestate shall predecease the intestate, the descendants of the deceased uncle or aunt will take, per capita or per stirpes according to §§ 28-9-204 and 28-9-205, the share the decedent would have taken if he or she had survived the intestate;

(7) Seventh, if the intestate is survived by no descendant, then in respect to the portion of his or her estate as does not pass under subdivisions (2)-(6) of this section, the inheriting class will be the surviving great-grandparents and great-uncles and great-aunts of the intestate. In this situation, each surviving great-grandparent shall take the same share as each surviving great-uncle and great-aunt, and no distinction shall be made between the paternal and maternal sides.

In other words, a maternal great-grandparent, great-uncle, or great-aunt shall take the same share as a paternal great-grandparent, great-uncle, or great-aunt and vice versa. If any great-uncle or great-aunt shall predecease the intestate, the descendants of the decedent will take, per capita or per stirpes according to §§ 28-9-204 and 28-9-205, the share the decedent would have taken if he or she had survived the intestate; and

(8) Eighth, if heirs capable of inheriting the entire heritable estate cannot be found within the inheriting classes prescribed in subdivisions (1)-(7) of this section, the real and personal property of the intestate, or the portion not passing under those subdivisions, shall pass according to § 28-9-215, devolution when all or some portion of a heritable estate does not pass under this section.

§ 28-9-215. Inability to Find Heir

If an heir to the heritable estate, or some portion thereof, cannot be found under § 28-9-214, then the portion of the heritable estate as does not pass under § 28-9-214 will pass as follows:

(1) First, to the surviving spouse of the intestate even though they had been married less than three (3) years;

(2) (A) Second, if there is no such surviving spouse, to the heirs, determined as of the date of the intestate's death in accordance with § 28-9-214, of the intestate's deceased spouse, meaning the spouse to whom the intestate was last married if there had been more than one (1) marriage.

(B) However, in case a marriage was terminated by divorce, rather than by death, the heirs of the divorced spouse shall not inherit; and

(3) Third, if there is no person capable of inheriting under subdivision (1) or (2) or this section, the estate shall escheat to the county wherein the decedent resided at death.

§ 28-11-203. Dower & Curtesy – Inchoate rights

- (a) The inchoate right of dower or curtesy of any spouse in real property in the State of Arkansas is barred in all cases when or where the other spouse has been barred of title or of any interest in the property for seven (7) years or more and also in real property or interest conveyed by the husband or wife but not signed by the other spouse when the conveyance is made or has been made for a period of seven (7) years or more.
- (b) (1) This section shall affect the inchoate right of dower and curtesy of a spouse in real property in this state only where or when the husband or wife has been barred of title for seven (7) years or more, or when a conveyance by the husband or wife, without the signature of the other spouse, has been made for a period of seven (7) years or more.
- (2) However, this section shall not apply unless the instrument of conveyance by the husband or wife has been of record for at least seven (7) years.

§ 28-11-301. Dower & Curtesy in Land

- (a) If a person dies leaving a surviving spouse and a child or children, the surviving spouse shall be endowed of the third part of all the lands for life whereof his or her spouse was seized, of an estate of inheritance, at any time during the marriage, unless the endowment shall have been relinquished in legal form.
- (b) A person shall have a dower or curtesy right in lands sold in the lifetime of his or her spouse without consent of the spouse in legal form against all creditors of the estate.

§ 28-11-305. Dower & Curtesy in Personal Estate

If a person dies leaving a surviving spouse and a child or children, the surviving spouse shall be entitled, as part of dower or curtesy in his or her own right, to one-third (1/3) part of the personal estate whereof the deceased spouse died seized or possessed.

§ 28-11-307. Dower & Curtesy – Surviving Spouse Without Children

- (a) (1) If a person dies leaving a surviving spouse and no children, the surviving spouse shall be endowed in fee simple of one-half (1/2) of the real estate of which the deceased person died seized when the estate is a new acquisition and not an ancestral estate and of one-half (1/2) of the personal estate, absolutely, and in his or her own right, as against collateral heirs.
- (2) However, as against creditors, the surviving spouse shall be invested with one-third (1/3) of the real estate in fee simple if a new acquisition, and not ancestral, and of one-third (1/3) of the personal property absolutely.
- (b) If the real estate of the deceased person is an ancestral estate, the surviving spouse shall be endowed in a life estate of one-half (1/2) of the estate as against collateral heirs and one-third (1/3) as against creditors.

§ 28-39-101. Allowances to Family

- (a)(1) In addition to their homestead, dower, and curtesy rights, the surviving spouse and minor children of a decedent, or either in the absence of the other, shall be entitled to have assigned to them out of the property owned by the decedent at the time of his or her death, personal property, tangible or intangible, to be selected prior to the sale thereof by the personal representative or after sale out of the proceeds thereof by the surviving spouse, if there is a surviving spouse or, otherwise, by the guardian of the minor children, when the personal property is of the value of four thousand dollars (\$4,000) as against distributees or the value of two thousand dollars (\$2,000) as against creditors.
- (2) The right to such an allowance shall vest in the surviving spouse upon the death of his or her spouse, shall not terminate with his or her subsequent death or remarriage, and shall become his or her absolute property or the property of his or her estate upon death without restriction as to use, encumbrance, or disposition.
- (3) If any of the minor children are not children of the surviving spouse, the allowance shall vest in the surviving spouse to the extent of one-half (1/2) thereof, and the remainder shall vest in the decedent's minor children in equal shares.
- (b) Such furniture, furnishings, appliances, implements, and equipment as shall be reasonably necessary for the family use and occupancy of his or her dwelling shall be assigned to and vested in the surviving spouse, if any, provided he or she was living with the decedent at the time of his or her death.

(c) During a period of two (2) months after the death of the decedent, the surviving spouse and minor children, or either in the absence of the other, shall be entitled to receive from the estate such reasonable amount, not exceeding in the aggregate one thousand dollars (\$1,000), as in the judgment of the court may be required for their sustenance, in accordance with the usual living standards of the family.

(d) The provisions of subsections (a)-(c) of this section shall be cumulative, and the provisions of subsections (b) and (c) of this section shall apply as against creditors and distributees.

§28-39-102. Residency Rights of Spouse

A surviving spouse may reside in the chief residence of the deceased spouse for two (2) months after death, whether or not dower or curtesy is assigned sooner, without being liable for any rent. In the meantime, the surviving spouse shall have a reasonable sustenance out of the estate of the deceased spouse.

§ 28-39-103. Residency Rights Extended

If the dower or curtesy of any surviving spouse is not assigned and laid off within two (2) months after the death of a deceased spouse, the surviving spouse shall remain in and possess the chief residence of the deceased spouse, together with the land thereto attached, free of all rent, until dower or curtesy shall be laid off and assigned to the surviving spouse.

§ 28-39-104. Payments Prior to Apportionment

Until curtesy or dower is apportioned, the court shall order such sums to be paid to the surviving spouse out of the rent of the real estate as shall be in proportion to his or her interest in the real estate.

§ 28-39-201. Homestead Rights of Surviving Family Members

(a) If the owner of a homestead dies leaving a surviving spouse, but no children, and the surviving spouse has no separate homestead in his or her own right, the homestead shall be exempt, and the rents and profits thereof shall vest in the surviving spouse during his or her natural life.

(b) However, if the owner leaves one (1) or more children, the child or children shall share with the surviving spouse and be entitled to one-half ($1/2$) the rents and profits till each of them arrives at twenty-one (21) years of age, each child's right to cease at twenty-one (21) years of age, and the shares to go to the younger children and then all to go to the surviving spouse. The surviving spouse or children may reside on the homestead or not.

(c) In case of the death of the surviving spouse, all of the homestead shall be vested in the minor children of the original homestead owner.

(d) Any rights and benefits given by this section shall not vest until the parties have been continuously married to each other for a period in excess of one (1) year.