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A Goal-Based Approach to Drafting Intestacy Provisions for Heirs Other than Surviving Spouses

by
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Introduction

Death is a short but meaningful word. Its denotation is simple: "the cessation of life;" its connotations are complex and range from grim images of grief to pleasant visions of a peaceful afterlife. Although what happens to a decedent’s soul at death is only faithfully surmised, the disposition of a decedent’s property is precisely determined from the laws of contracts, wills, trusts, and estates.

This Note focuses not on those who carefully plan the disposition of their estates, but on those whose failure to plan—either in the entirety or in an effective manner—triggers application of the laws of intestate succession. The problems associated with intestacy statutes are significant because most people are involved with inheritance at some time, and thus no area of private law more concerns the public than intestate succession.

Despite their significance, intestacy laws have developed in a seemingly ad hoc fashion, varying widely within and among countries...
throughout history. This variability is particularly apparent in the United States, where federalism has fostered the adoption of widely diverse intestacy provisions. This Note focuses specifically upon provisions that prescribe the share of heirs other than the surviving spouse because in many states these provisions dispose of more than half of an intestate's property. The diversity of these provisions indicates that the ad hoc legislative approach currently used fails to ensure that all of the goals underlying intestacy statutes are promoted uniformly among jurisdictions.

This Note proposes a model intestacy statute to govern distribution to heirs who are not the surviving spouse. The statute attempts to strike the optimal balance of the many goals and attendant policies that underlie modern intestacy schemes.

Part I of this Note provides an overview of the laws of intestate succession, focusing on when and to whose estates intestacy provisions apply. Part II evaluates the goals underlying modern intestacy schemes. Finally, Part III proposes a model intestacy provision for heirs other than the surviving spouse that satisfies these modern intestacy goals. Before proceeding toward that end, it is appropriate to set the stage by examining when and to whose estates intestacy provisions most often apply.

I. When and to Whose Estates Intestacy Provisions Apply

A. When Do Intestacy Provisions Apply?

Intestacy provisions apply in a variety of situations that, from a testate or intestate decedent's viewpoint, may be thoughtfully planned or purely accidental. For instance, a testate decedent may devise all or part of her estate to "my next of kin as though I had died intes-


5. For example, in California the share of heirs who are not the surviving spouse equals either: the entire intestate estate if there is no surviving spouse; one-half of the intestate estate when the decedent leaves either one child, issue of one deceased child, or parent(s) or their issue; or two-thirds of the intestate estate when the decedent leaves either more than one child, one child and issue of one or more deceased children, or issue of two or more deceased children. See CAL. PROB. CODE §§ 6401-02 (West 1993).


7. An intestacy scheme applies not only at the direction of a testate decedent who adopts such a scheme as his will, but also at the direction of a probate court when a decedent dies intestate—either purposefully by deliberately not making a will or accidentally by failing to make any will or failing to make a will that complies with applicable laws.
tate." Similarly, an intestate decedent may knowingly rely upon her state's intestacy scheme as representative of her dispositive wishes. In contrast, a decedent may die wholly or partially intestate.

8. For an overview of relevant case law, see Annotation, Term "Next of Kin" Used in Will, as Referring to Those Who Would Take in Cases of Intestacy Under Distribution Statutes, or to Nearest Blood Relatives of Designated Person or Persons, 32 A.L.R. 2d 296 (1994).


However, this possibility was characterized as remote in a telephone survey of 750 persons living in Alabama, California, Massachusetts, Ohio, and Texas that aimed at discerning the distributive preferences of intestate decedents. Mary Louise Fellows et al., Public Attitudes About Property Distribution at Death and Intestate Succession Laws in the United States, 1978 Am. B. Found. Res. J. 321, 339-40 & n.73. The survey results indicated that "most citizens do not know who will inherit their property and are not relying on existing intestacy statutes." Id. at 340.

Similar results appeared in a study of Iowans' dispositive preferences conducted at approximately the same time as the Fellows study. Contemporary Studies Project, A Comparison of Iowans' Dispositive Preferences with Selected Provisions of the Iowa and Uniform Probate Codes, 63 Iowa L. Rev. 1041, 1076-78 (1978). In that study, interviewees were divided into two groups: (1) survivors of intestate decedents who were presumed to be somewhat familiar with Iowa's intestacy scheme because of their experience with the intestate distribution of a relative's estate and (2) citizens of Iowa generally. Id. at 1045, 1077. Dramatically, only 25% of the survivor interviewees and 13% of the citizen interviewees "indicated that they felt no need for a will, either because state law would adequately dispose of their property or because they believed that their family would get the property automatically." Id. at 1077.

Likewise, results of a study of records of 223 decedent estate administrations in Washtenaw County, Michigan revealed that "slightly less than one half of all decedents leaving estates of sufficient size to be administered by other than summary procedures were content to let the intestate law take its course." Olin L. Browder, Jr., Recent Patterns of Testate Succession in the United States and England, 67 Mich. L. Rev. 1303, 1304, 1313 (1969).

See also Paul L. Sayre, Recent Ideologies in the Law of Succession to Property, 32 Ill. L. Rev. 691, 699 (1938) (observing that "[i]ntentional intestacy of large estates is surely rare"). Cf. John H. Beckstrom, Sociobiology and Intestate Wealth Transfers, 76 Nw. U. L. Rev. 216, 231 & n.53 (1981) (stating that he personally had no will for many years in reliance upon the laws of intestacy as the way he wished his property to pass at his death).

10. Failures resulting in total intestacy often result from: (1) laziness, see Fellows et al., supra note 9, at 339; (2) not getting around to making a will, see Contemporary Studies Project, supra note 9, at 1077; or (3) failure to conform to the formalities required for the valid execution of a testamentary instrument. See Russell Niles, Probate Reform in California, 31 Hastings L.J. 185, 209-10 (1979). See also California Law Revision Commission, Tentative Recommendation Relating to Wills and Intestate Succession, 16 Cal. L. Revision Comm'n Reps. 2305, 2318 (1982) (noting that California law contains technical requirements that often invalidate wills).

For a general discussion of execution requirements, see Sussman et al., supra note 6, at 23-25. For current examples of execution requirements, see Cal. Prob. Code §§ 6110-13 (West 1993).

11. Failures resulting in partial intestacy may occur for a variety of reasons, including failure of a will to dispose of all probate assets. Fellows et al., supra note 9, at 322 n.5. In cases of partial intestacy, intestacy statutes apply only to property not disposed of by the will. Id.
cause she unintentionally failed to make a comprehensive and valid will.

It has been noted that the role that inheritance law plays in family wealth transmission is ever-dwindling because family wealth increasingly is passed on through lifetime transfers such as educational and other assistance from parent to child, survivorship arrangements, life insurance between spouses, and pension plans. Although this may be true, many decedents do not alienate all of their assets prior to their deaths. As a result, total or partial intestacy can and often does occur despite the apparent frequency of lifetime transfers.

B. To Whose Estates Do Intestacy Provisions Apply?

Most studies of wealth transmission at death focus on testate rather than intestate distribution. Consequently, the characteristics of typical intestate decedents must be inferred from the characteristics of testate decedents that are described in legal commentary and various empirical studies.

According to one law professor, "[a] modern picture of will-making clients is a picture of people embattled by a system. Many of them speak to lawyers of their interest in wills as a matter of seeking protection . . . [from] the machinery of probate." This characterization of will-making clients as protection-seekers is consistent with the findings of a 1978 study of Iowans that revealed that "[t]hose persons who make a will and thus avoid intestate distribution of their property tend to be older and wealthier than the typical intestate, and also are more likely to be married or widowed." Persons with these characteristics seemingly have more reason to seek protection from the uncertainties of probate than do their younger, less affluent, never-married counterparts.


13. But see Contemporary Studies Project, supra note 9, at 1068 ("As a result of joint property and life insurance ownership, significant portions or even all of a decedent's estate can be distributed without being subject to the state probate statutes.").

14. In fact, all three of the major empirical studies that have investigated the number of people dying intestate have determined that more people die intestate than testate. John W. Fisher II & Scott A. Curnutte, Reforming the Law of Intestate Succession and Elective Shares: New Solutions to Age-Old Problems, 93 W. Va. L. Rev. 61, 72 (1990) (citing Allison Dunham, The Method, Process, and Frequency of Wealth Transmission at Death, 30 U. Chi. L. Rev. 241 (1963); Contemporary Studies Project, supra note 9; and Fellows et al., supra note 9). See also Sussman et al., supra note 6, at 62-69 & 62 n.2 (discussing the proportion of testate cases in various jurisdictions).


In addition, a 1963 study of 500 Chicagoans revealed that women were somewhat more likely than men to die testate, and skilled workers such as craftsmen, operators, sales workers, and clericals were substantially less likely to die testate than were Chicagoans in the sample as a whole. Similarly, a 1978 telephone survey of 750 persons living in Alabama, California, Massachusetts, Ohio, and Texas found that the greater the interviewee’s family income, estate size, age, or educational level, the more likely he or she was to have a will. Finally, interviewees in the 1978 telephone survey who were employed in nonlabor occupations were more likely than those in blue or white collar occupations to have a will, and interviewees with all adult children were far more likely to have a will than those with no children or some minor children. Therefore, intestate decedents appear somewhat more likely than testate decedents to be young, nonaffluent, and uneducated.

II. By What Criteria Should Intestacy Statutes be Judged?

Before examining this Note’s proposal for a model intestacy provision for heirs other than the surviving spouse, it is necessary to understand the goals behind modern intestacy schemes because these goals define the criteria for the proposed statute. Specific intestacy goals discussed in this Part include fostering simplicity, comprehensibility, and uniformity of intestacy statutes; allowing an intestate’s “deserving” relatives by consanguinity and affinity to take by intestacy; satisfying a decedent’s presumed intentions and society’s interests; limiting delays, expenses, and liabilities associated with the personal representative’s duties of locating and notifying prospective heirs; and avoiding frequent escheat to the state.

A. General Criteria

Generally, an intestacy statute should be clear, simple, and comprehensible, which means that it should govern only the more commonly encountered situations. Thus, inheritance by persons who are close but not related by blood or marriage to an intestate, such as same or opposite sex living companions, should be determined by the

17. But see id. at 1076.
18. Dunham, supra note 14, at 248-49.
20. Id. at 338.
21. See infra Parts II.A and II.E.
22. See infra Part II.B.1-2.
23. See infra Part II.A.
24. See infra Part II.C.
25. See infra Part II.D.
individual decedent. It seems likely that a decedent with such a relationship is more inclined than an average decedent to realize that her situation is unique and that therefore a will is not only appropriate but also necessary for fulfilling her dispositive preferences. Consequently, an intestacy statute need not and should not attempt to cover all of the complex alternatives that might be expected to be covered by individual wills.

In addition to providing clarity, simplicity, and comprehensibility, it is generally agreed\(^\text{27}\) that an intestacy statute should provide an inheritance pattern that the "average decedent probably would have wanted if an intention had been expressed by will."\(^\text{28}\) Despite this general agreement, however, legislators should recognize that the desires of normal or average decedents do not provide the sole basis for framing or justifying an intestacy [statute].\(^\text{29}\) In fact, satisfying a decedent’s presumed intentions seems relatively unimportant in comparison to more compelling goals of intestacy schemes, such as producing a fair pattern of distribution among surviving family members and serving society’s interests.\(^\text{30}\)

Producing a fair pattern of distribution among surviving family members involves creating a pattern "that the recipients believe is fair..."\(^\text{27}\) This general agreement is by no means universal, however. See Mark L. Ascher, The 1990 Uniform Probate Code: Older and Better, Or More like the Internal Revenue Code?, 77 MINN. L. REV. 639, 641 (1993):

> I would prefer to see the UPC pay more attention to “living” values, such as simplicity and certainty, than to “dead” values, such as incremental improvements in effectuating a decedent’s intent. I am less interested in a system that seeks to carry out a decedent’s intent (particularly where the decedent has never bothered to express that intent) than in a system that simply and without litigation disposes of a decedent’s assets.

\(^\text{28}\) Id. Accord King v. Riffee, 309 S.E.2d 85, 87-88 (W. Va. 1983); STATE BAR OF CALIFORNIA, THE UNIFORM PROBATE CODE: ANALYSIS AND CRITIQUE 29-30 (1973) [hereinafter UPC CRITIQUE]; LAWRENCE W. WAGGONER ET AL., CASES AND MATERIALS ON WILLS, TRUSTS, AND FUTURE INTERESTS 71 (1991); Thomas E. Atkinson, Succession Among Collaterals, 20 IOWA L. REV. 185, 187 (1935); Allison Dunham, supra note 14, at 241; Fellows et al., supra note 9, at 323; Contemporary Studies Project, supra note 9, at 1043-44; and California Law Revision Commission, supra note 10, at 2318.

\(^\text{29}\) See also UNIF. PROB. CODE, supra note 9, at 40-41 (stating that “[i]n the twenty or so years between the original promulgation of the Code and the 1990 revisions, ... [a] decline of formalism in favor of intent-serving policies [had occurred]”); Margaret M. Mahoney, Stepfamilies in the Law of Intestate Succession and Wills, 22 U.C. DAVIS L. REV. 917, 939 (1989) (stating that “[t]he focus in the law of descent is on the property owner and not on the expectations of surviving family members”).

\(^\text{30}\) See generally Beckstrom, supra note 9 (arguing that legislators should consider sociobiological theory when inferring a decedent’s dispositive intent).
and thus does not produce disharmony within the surviving family members \[n\]or disdain for the legal system.'\(^3\)\(^1\) Despite the obvious desirability of creating such a pattern, it has been observed that "[t]he focus in the law of descent is on the property owner and not on the expectations of the surviving family members."\(^3\)\(^2\) Nevertheless, the viewpoints of a decedent's relatives should be considered during the creation of an intestacy scheme because "[a] major concern of any probate legislation or dispositive system is justice and fairness for the successors."\(^3\)\(^3\) Intuitively, this seems true even though "any participation in the estate of a deceased person is by grace of the sovereign power which alone has any natural or inherent right to succeed to such property."\(^3\)\(^4\)

Serving society's interests involves creating a pattern of distribution that is designed: "(1) to protect the financially dependent family; (2) to avoid complicating property ties and excessive subdivision of property; (3) to promote and encourage the nuclear family; and (4) to encourage the accumulation of property by individuals."\(^3\)\(^5\) Although each of these aims is important, this Note's proposal focuses upon the first aim, protecting the financially dependent family,\(^3\)\(^6\) because this aim best serves society's interests. Protection of financially dependent family members benefits not only an intestate's dependents who inherit under well-crafted intestacy statutes, but also other family members and the public at large, upon whom the burden of supporting the dependents would otherwise fall if the statutes did not adequately permit dependents to inherit.\(^3\)\(^7\)

While striving to meet these goals of clarity, simplicity, and comprehensibility and satisfaction for intestates, their survivors, and society, legislators should recognize that intestacy statutes also affect the interpretation of wills and trusts. These instruments often make gifts to the "heirs" or "next of kin" of the donor or some other specified person. In such cases, the takers may be defined as those who would

\(^{31}\) WAGGONER ET AL., supra note 28, at 71.
\(^{32}\) Mahoney, supra note 28, at 939.
\(^{33}\) Eugene F. Scoles, Probate Reform, in DEATH, TAXES AND FAMILY PROPERTY, supra note 15, at 149.
\(^{34}\) 16 AM. JUR. Descent and Distribution § 12 (1938) (cited with approval in McFadden v. Norton, 69 S.E.2d 445 (Va. 1952), which is quoted in King v. Riffe, 309 S.E.2d 85, 88 (W. Va. 1983)).
\(^{35}\) Fellows et al., supra note 9, at 324.
\(^{36}\) See infra Part III.B.2.
\(^{37}\) For a brief historical examination of English family maintenance provisions authorizing courts to provide an allowance for the family of a testator who did not adequately provide such an allowance in his will, see JOHN RITCHIE ET AL., CASES AND MATERIALS ON DECEDENT'S ESTATES AND TRUSTS 23 (1993).
succeed to the property under the appropriate intestacy statute.\(^{38}\)

Thus, the needs of not only intestate decedents but also those of testate decedents, the survivors of intestate and testate decedents, and society must be carefully considered during the drafting of an intestacy statute.

**B. Capacity for Allowing Deserving Relatives to Take**

Above all, an intestacy statute should have a strong capacity for allowing a decedent’s deserving relatives to inherit because such a capacity is consonant with the fairness that intestates, surviving family members, society, and legislators undoubtedly desire from intestate succession. The particular group of relatives thought to be deserving varies widely among jurisdictions and may include all, some, or many of a decedent’s relatives by consanguinity or affinity.

1) **Relatives by Consanguinity**

A decedent’s relatives by consanguinity\(^ {39}\) include her descendants,\(^ {40}\) her ancestors,\(^ {41}\) and her collaterals.\(^ {42}\) Consanguinity forms the basis for nearly all American intestacy schemes.\(^ {43}\) The overwhelming importance of consanguinity in the law of intestacy probably stems from traditional perceptions of the desirability of passing property along blood lines. Although the importance of consanguinity is undisputed, a burning question remains: How far should intestate succession by consanguinity extend among collaterals? In other words, which of a decedent’s collateral relatives are deserving enough to take by intestacy? This question has been debated time and time again, with sharp and widespread disagreement among jurisdictions and among legal commentators.

\(^{38}\) Niles, supra note 10, at 200. See also supra note 8 and accompanying text (regarding devises made to next of kin).

\(^{39}\) Consanguinity means “[k]inship; blood relationship; the connection or relation of persons descended from the same stock or common ancestor.” Black’s Law Dictionary 303 (6th ed. 1990).

\(^{40}\) “The term ‘descendants’ (or ‘issue’) denotes a multiple-generation class, which includes not only children, but also grandchildren, great-grandchildren, and so on all the way down the descending line.” Waggoner et al., supra note 28, at 79.

\(^{41}\) Ancestors are those “from whom a person lineally descended or may be descended.” Black’s Law Dictionary 84 (6th ed. 1990).

\(^{42}\) “A collateral relative is a blood relative [of the decedent] who shares a common ancestor with the decedent, but is neither an ancestor nor a descendant.” Waggoner et al., supra note 28, at 69. Examples of collateral relatives include brothers, sisters, nephews, nieces, aunts, uncles, and cousins. Id. at 88.

\(^{43}\) Browder, supra note 9, at 1312. But see Cal. Prob. Code §§ 6402(e) & 6402(g) (West 1993) (allowing a predeceased spouse’s issue, parents, or issue of parents to take by intestacy) and discussion of relatives by affinity infra Part II.B.2.
Many jurisdictions liberally allow a decedent’s “next of kin” or “nearest kindred” to take by intestacy when no close relative survives the decedent.\(^{44}\) Next of kin or nearest kindred normally refers to surviving persons “who are most nearly related by blood [to the decedent].”\(^{45}\) Such persons may include the “laughing heir,” who is one who is “so loosely linked to his ancestor as to suffer no sense of bereavement at his loss.”\(^{46}\)

Supporters of next of kin provisions, including the State Bar of California, reason that “[i]t is doubtful that [a provision that would cause property to escheat more often to the state by cutting off next of kin] represents the intention of any person who dies intestate.”\(^{47}\) Other rationales behind such provisions remain disappointingly unarticulated.

One opponent of such schemes has asserted that “[t]he only rationale for this progression to remote kindred appears to be that anything is better than escheat.”\(^{48}\) Similarly, Professor Richard V. Wellman, Chief Reporter for the Uniform Probate Code and former Educational Director for the Joint Editorial Board,\(^{50}\) asserted that “[t]ypical inheritance statutes that let relatives take ahead of the state no matter how remote the blood connection may be have little justification other than a long history that few have questioned.”\(^{51}\)

Other opponents of next of kin provisions\(^{52}\) advocate cutting off laughing heirs by limiting inheritance “to relatives whom the decedent...


\(^{46}\) David F. Cavers, Change in the American Family and the “Laughing Heir,” 20 Iowa L. Rev. 203, 208 (1935).

\(^{47}\) Escheat is “[a] reversion of property to the state in consequence of a want of any individual competent to inherit.” Black’s Law Dictionary 545 (6th ed. 1990). See discussion of avoiding escheat infra Part II.D.


\(^{49}\) Browder, supra note 9, at 1312.

\(^{50}\) Richard V. Wellman, Response of the Joint Editorial Board for the Uniform Probate Code to the State Bar of California’s “Uniform Probate Code: Analysis and Critique” (1974) [hereinafter Response].

\(^{51}\) Id. at 6.

\(^{52}\) See, e.g., 1 Richard T. Ely, Property and Contract in Their Relations to the Distribution of Wealth 447 (1914) (“In the United States we still have the absurd anachronism that in cases of intestacy a relative may inherit the property of a decedent, no matter how distant the relationship.”) (emphasis added); Perry Evans, Comments on the Probate Code of California, 19 Cal. L. Rev. 602, 613 (1931)
probably knew and had an interest in"53 or who were dependent upon or had the probable affection of the decedent.54 The opponents' rationale is that "the remotely related 'laughing heir' probably has a weaker claim to the property than closer kin in terms of ties with the intestate resulting from contacts with him."55 In fact, even laughing heirs sometimes view themselves as undeserving of decedents' bounties.56

In addition to the weakness of these heirs' claims, other rationales for cutting off laughing heirs include:57

(1) It simplifies the administration of estates (and of trusts where there is a final gift to "heirs") by avoiding the delay and expense of attempting to find remote missing heirs and by minimizing problems of service of notice.58

(2) It eliminates the standing of remote heirs to bring will contests (or trust litigation) and thus minimizes the opportunity for unmeritorious litigation brought for the sole purpose of coercing a settlement.59

(3) It removes a significant source of uncertainty in land titles.60

There is no good reason why cousins, at any rate those beyond the fourth degree of kinship, i.e., first cousins, should have any right of inheritance. Such distant relatives have no such contact with the decedent as to make them dependent upon him or to bring them within the circle of his warm affection.

See generally Atkinson, supra note 28, at 192-97 (proposing limitations on succession among collaterals); Cavers, supra note 46, at 205 (predicting that changes in the structure and life of the American family and considerations of convenience will lead to drastic limitations on the right of remote kindred to succession upon intestacy).


54. Atkinson, supra note 28, at 190. See also Evans, supra note 52, at 613.


56. See Sussman et al., supra note 6, at 144-45 (stating that "Laughing heirs have been considered unworthy takers, and they saw themselves as such. They had rendered the deceased no service of any kind; they could not justify their windfall to themselves. Unlike Irish Sweepstakes winners, they did not even risk a shilling for their good fortune.").

57. Rationales (1) - (3) are quoted from California Law Revision Commission, supra note 10, at 2335.

58. See Niles, supra note 10, at 200 n.98.

59. See Evans, supra note 52, at 613 (stating that useless, burdensome, and prolonged litigation to establish relationship is occasionally brought in California by remote heirs whom the decedent did not know and who did not know the decedent).

60. See Cavers, supra note 46, at 211 asserting that a restriction of the class of those entitled to succession would remove an important source of uncertainty in titles to land. Where a decedent leaves no close kindred it is often difficult to ascertain whether the persons who first assert their claim may not later be obliged to yield in precedence to the long lost cousin from Australia.
(4) The enumerated relatives and, then the state are more likely to care for [the] decedent [and are thus more deserving of inheritance] than are the decedent's more remote relatives.61

In sum, relatives by consanguinity are generally considered deserving, but other policy considerations render them less deserving as their relationship with the intestate becomes more remote.

(2) Relatives by Affinity

A decedent's relatives by affinity include blood or adopted relatives of her spouse, such as her spouse's parents, siblings, or descendants of siblings, and spouses of the decedent's blood or adopted relatives, such as her daughters- and sons-in-law.62 Almost all intestacy schemes exclude relatives by affinity,63 presumably based upon the view that such relatives generally are not deserving and upon the desire to keep intestacy schemes simple by limiting possible takers.

Jurisdictions that do allow relatives by affinity to take by intestacy may base this allowance upon the idea that such relatives were probably close to the decedent and are therefore either more deserving of the decedent's bounty than are the state65 or distant blood relatives or equally as deserving as are the decedent's close blood relatives. For example, the California Probate Code gives issue of a predeceased spouse priority over the decedent's next of kin for succession to the share of the intestate estate for heirs other than a surviving spouse.66

In addition, at least one commentator has proposed that natural children and qualifying stepchildren should share equally in the intestate estate if most intestates in qualifying families "would prefer to include stepchildren in the category of children as heirs."67 It is the contention of this Note, as discussed more fully in Part III.B.1, that some relatives by affinity are indeed deserving and should therefore be eli-

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61. See DeWaele & Holman, supra note 53, at 1028.
62. Affinity is the "[r]elation which one spouse because of marriage has to blood relatives of the other." Black's Law Dictionary 59 (6th ed. 1990).
63. Waggoner et al., supra note 28, at 91.
65. For a description and discussion of American statutes that allow stepchildren, stepparents, and heirs of the decedent's deceased spouse to take by default to prevent escheat when there are no "real" heirs (i.e., blood relatives of the decedent), see Mahoney, supra note 28, at 920-22, 924.
gible to take by intestacy if they can substantiate their status as deserving.

C. Limiting Delays, Expenses, and Liabilities Associated with the Personal Representative’s Duties of Locating and Notifying Prospective Heirs

Another important goal in formulating any intestacy statute is to minimize delays, expenses, and liabilities associated with the personal representative’s duties of locating and notifying prospective heirs. Often described in deceptively simple terms, these duties can generate a variety of problems for the personal representative and others who are involved in or affected by probate proceedings, especially in cases in which unrestricted inheritance by remote collaterals is allowed. For example, failure to provide adequate notice may be a violation of the heirs’ constitutional rights to due process. However, adherence to stringent notice requirements may result in lengthy delays in probate proceedings because “the mobility of families in today’s society makes tracing remote relatives difficult” or because of “the internecine strife among competing claimants.” Moreover, “[i]nvestigations to determine those entitled to succession may be

68. With respect to intestacy and other probate proceedings, the duties of locating and providing notice to prospective heirs lie with the personal representative of the estate, who is often called an executor or administrator. An administrator is “[a] person appointed by the court to administer (i.e., manage or take charge of) the assets and liabilities of a decedent . . . . If the person performing these probate services is named by the decedent’s will, he is designated as the executor, or she the executrix, of the estate.” BLACK’S LAW DICTIONARY 46 (6th ed. 1990). For the purpose of simplicity, this Note will hereinafter refer to either an executor or an administrator as a personal representative.

69. Although beyond the scope of this Note, for a discussion and comparison of the requirements of notice in probate and other proceedings, see Gary R. Cunningham, Due Process—The Requirement of Notice in Probate Proceedings, 40 Mo. L. Rev. 552 (1975). Also, for a critique of the Uniform Probate Code no-notice probate and nonintervention administration provisions see Charles J. Parker, No-Notice Probate and Non-Intervention Administration Under the Code, 2 CONN. L. REV 546 (1970).

70. See Verner F. Chaffin, Descent and Distribution—Inheritable Property and Relative Rights of Heir and Administrator, in COMPARATIVE PROBATE LAW STUDIES 15, 35 (1977) (“Unrestricted inheritance by remote collaterals results in a time-consuming and often wasteful search for missing or unknown blood relatives of the decedent.”).

71. “The constitutional basis for the power or the right of a probate court to act in an estate is the mailing, service, or publication of adequate notice of the initial petition to all persons who are concerned. [3] The purpose of such notice is to inform persons who are interested in the disposition of the property of the decedent so that they may have an adequate opportunity to claim such property.” 1 ARTHUR K. MARSHALL & ANDREW S. GARB, CALIFORNIA PROBATE PROCEDURE WITH JUDICIAL COUNCIL FORMS § 501 (5th ed. rev. 1991) (citations omitted).


73. Cavers, supra note 46, at 211.
costly,”74 and “the cost of tracing, or attempting to trace, the remote relatives is likely to deplete the decedent's estate.”75 Depletion of the estate would defeat a significant purpose of probate, which is to distribute the decedent’s assets to her heirs.76

In determining how to remedy problems caused by inadequate notice requirements, legislators should remember that “[p]rocedures relating to settlement of estates should start from the assumption that estates belong to the survivors.”77 Such an assumption makes obvious the need for states to adopt the simplest notice requirements that comport with due process. In states such as California, for example, notice need only be given to known heirs, “to the heirs named in the petition for letters of administration,78 and to any additional heirs who become known to the person giving the notice prior to the giving of the notice.”79 However, in other states that lack such a relaxed statutory provision, a personal representative generally must exert reasonable diligence in locating a decedent’s heirs.80 A personal representative’s errors and oversights in carrying out notice requirements could subject the personal representative to liability for negligence and could also result in the imposition of a constructive trust81 upon the assets of an estate that were already distributed.82 These

74. Id.
75. Fisher & Curnutte, supra note 14, at 81.
77. UPC DRAFT, supra note 3, at 7 (referring to the desirability of eliminating, to the extent possible, involved court procedures relating to settlement of estates).
79. CAL. PROB. CODE § 1206 (West 1993).
81. "A constructive trust is a relationship with respect to property subjecting the person by whom the title to the property is held to an equitable duty to convey it to another on the ground that his acquisition or retention of the property is wrongful and that he would be unjustly enriched if he were permitted to retain the property." BLACK'S LAW DICTIONARY 315 (6th ed. 1990) (citing RESTATEMENT (SECOND) OF TRUSTS § 1(e)).
82. For example, in Shepherd v. Townsend, 162 So. 2d 878 (Miss. 1964), the decedent left her personal estate to her nearest of kin, according to the laws of descent and distribution, and a statute provided that the executor use reasonable diligence in locating heirs under such circumstances .... [T]he executor was [found] guilty of negligence in failing to locate the decedent's closest heir, and in distributing the estate to a more remote heir, on the ground that the executor failed to exercise reasonable diligence in not having an attorney investigate the decedent's family tree. 10 A.L.R. 3d at 552-53. Compare Stevens v. Torregano, 13 Cal. Rptr. 604 (Ct. App. 1961), in which “ignorance on the part of an executor of the existence of a pretermitted heir was not, legally, a 'mistake' authorizing the imposition of a constructive trust upon the assets of an estate already distributed, since it was a general rule that an executor was under no duty to search out unknown heirs.” 10 A.L.R. 3d at 551 (discussing Stevens v. Torregano).
undesirable consequences, coupled with efficiency considerations, reinforce the need for both simple notice requirements and limited inheritance among collaterals.

D. Avoiding Frequent Escheat

Although escheat seldom occurs, especially in jurisdictions that allow inheritance by remote collaterals or by relatives by affinity, the desirability of frequent escheat has been studied and debated. As explained in this subpart, it is desirable to limit the frequency of escheat because deserving relatives generally will benefit more than the state will from intestate succession to the same size estate and because modern intestates probably would prefer that their property pass to their deserving relatives rather than to the state.

Some commentators who favor escheat have argued that an intestate's presumed views about escheat should be disregarded because "[i]t is fruitless to debate about the probable intention of intestate decedents [who die] without close relatives. After all, the decedent can leave a will to direct his property away from the state."83

In a similar vein, Professor David F. Cavers asserted a positive view of escheat in his 1931 article entitled Change in the American Family and the "Laughing Heir."84 In that article, Professor Cavers argued that intestates may not be as reluctant as they once were to allow escheat rather than succession to remote collateral relatives because "[t]he state, which would be the most immediate beneficiary of ... [a reform that would cut off laughing heirs], has come to achieve a place less antagonistic to the individual citizen than it has occupied since the breakdown of the feudal organization of society."85 Further, Professor Cavers suggested that it might be desirable to devote a portion of escheated property to uses localized in the decedent's domicile.86 Professor Cavers concluded, "If such a provision were made, it is not unreasonable to suppose that many persons, having no relatives within the privileged degrees, would be content to allow their property to devolve upon the state."87

Other commentators have posited that a provision that frequently causes property to escheat to the state88 probably does not

83. Response, supra note 50, at 6.
84. See generally Cavers, supra note 46.
85. Id. at 210.
86. Id.
87. Id. at 210-11.
88. See, e.g., UNIF. PROB. CODE § 2-103, which excludes relatives more remote than descendants from a grandparent of the decedent. Response, supra note 50, at 5. Uniform Probate Code § 2-103 "provides for inheritance by lineal descendants of the decedent, parents and their descendants, and grandparents and collateral relatives descended from grandparents; in line with modern policy, it eliminates more remote relatives tracing
represent the intention of persons who die intestate. Although contrary to Professor Cavers' view, this position probably is more reflective of the realities of modern American society, in which increasing reluctance to pay taxes and other fees to the government implies increasing reluctance to benefit the state through escheat.

This position against escheat is also consistent with the results of a 1978 study of Iowans' dispositive preferences in which only 10 percent of 485 live interviewees hypothetically preferred escheat to the state education fund if only a stepparent and a distant relative whom they had never met survived them. In addition, this position comports with the sociobiological view of escheat, which postulates that for genetic reasons intestates would prefer to benefit fairly distant blood relatives through inheritance rather than the general public through escheat. Finally, this position against escheat has been supported through great-grandparents."

89. See supra text accompanying note 48.

90. Contemporary Studies Project, supra note 9, at 1119. The detailed study results were as follows: (1) 45% would give all to the stepparent; (2) 3% would give all to the distant relative; (3) 22% would divide the estate between the stepparent and the distant relative; (4) 9% would give all to friends; (5) 10% would give all to the state education fund; (6) 3% did not care; and (7) 9% would give all to others. Id. at 1118. The study's authors also noted that only 25% of the interviewees allocated any portion of the estate to the distant relative and only 10% were amenable to escheat to the state education fund. See id. at 1119.

In 1981 the Iowa study's results were analyzed by Professor John H. Beckstrom in terms of reciprocal altruism and nepotism, two aspects of sociobiological theory. See generally Beckstrom, supra note 9. "In reciprocal altruism, the altruist is doing something to benefit another in anticipation that someone will return the favor." Id. at 222-23. In nepotism, which is based upon a high percentage of genetic overlap between the nepotist and a relative, the nepotist benefits the relative at a cost to the nepotist's ability to reproduce, or perhaps even to live, though the relative probably will not return the favor. Id. at 224.

Professor Beckstrom reconciled the Iowa study's results as follows: "[R]eciprocal altruism impulses pointing to stepparents and friends would be stronger than the nepotistic impulses in favor of distant relatives" whom the interviewee has never met. Id. at 257. Further, although a stepparent and friends are no more closely related to the interviewees than the beneficiaries of the state education fund, the stepparent and friends "are much more likely to have an ongoing reciprocating aid arrangement with a respondent than is a distant relative whom the respondent has never met." Id.
ported by at least one creative court, in circumvention of the highly statutory nature of intestate succession law, when remote blood relatives survived a decedent and the legislature failed to adequately define the term "heir."^92

Notwithstanding the views of intestates, commentators, and courts toward escheat, whether and how often escheat can occur is determined by state law.\(^9\) Some states, such as California, provide little opportunity for escheat, preferring that intestate estates pass to relatives by consanguinity or affinity. Other states provide greater opportunity for escheat, reasoning that "[i]n an expanding welfare society, where the government performs more and more services for its citizens and assumes responsibilities which in earlier days rested upon the family, it is at least arguable that the state should benefit at the expense of remote next of kin."^94

The California approach that limits escheat is preferable to the latter approach because individuals may benefit substantially through inheritance of even a modest estate while a state would benefit relatively minimally through escheat of the same estate. Under either approach, a state should ensure fairness to heirs who were not properly notified of probate proceedings by affording a reasonable postprobate

Beckstrom, \textit{supra} note 9, at 256. For a general explanation of the relationship between sociobiological theory and intestacy, see \textit{supra} note 90.

92. \textit{See In re Estate of Brunel}, 600 A.2d 123 (N.H. 1991). In \textit{Brunel}, second cousins related to the decedent through a common great-grandfather took by intestacy despite the provision in the New Hampshire statutory scheme that limited inheritance to those claiming through the grandparent or issue of grandparent line. The statutory scheme explicitly required that "there be no heir" before escheat could occur, but the scheme failed to define the term "heir." \textit{Id.} at 127. Consequently, the New Hampshire Supreme Court resorted to a common law scheme of descent and distribution borrowed from the English Statute of Distributions. \textit{See} Richard R. Volkmer, \textit{Escheat Prevented by Using Common Law}, 19 EST. PLAN. 250 (1992) (analyzing \textit{In re Estate of Brunel} as an example of how courts have gone to unusual lengths to avoid escheat when remote blood relatives survive a decedent). Use of the common law scheme, which acknowledged \textit{all} collaterals and preferred the nearer to the more remote, coupled with use of the state statutory scheme that did not expressly prohibit distribution to second cousins, allowed the court to avoid escheat by allowing the decedent's remote relatives to take by intestacy. \textit{See Brunel}, 600 A.2d at 127.

93. Cavers, \textit{supra} note 46, at 210-11 (stating that "[s]uccession to intestate property is at the will of . . . the state in which it is situated.").

94. Chaffin, \textit{supra} note 70, at 36. \textit{See also} Atkinson, \textit{supra} note 28, at 194 ("It is reasonable therefore that the state should receive the property of an intestate who leaves no kindred close enough to have meritorious claim to inherit his property. The costs of education, highways, and more recently, extensive relief to the unemployed create demands on the treasury which escheats might help to satisfy.") and \textit{ELY}, \textit{supra} note 52, at 432 ("The duty of support, which once rested upon distant relatives, has now passed over to society and is incorporated in the state; and as society has taken some of the obligations, it is only proper for society to claim some of the rights which formerly belonged to the family.").
DRAFTING INTESTACY PROVISIONS

grace period during which heirs can step in and claim their shares prior to permanent vesting of the property in the state.95

E. Fostering Uniformity with Intestacy Schemes of Other States

Like the desirability of escheat, the need for the adoption of nationally uniform intestacy schemes has also been debated. Proponents of uniformity focus their argument upon the increased mobility of persons in modern society,96 asserting that the simplification of intestate succession law that could be achieved through uniformity would serve the public interest97 because “[m]obile Americans are more likely to be served by uniform rules of heirship, than by one or another view[s] from particular states to the effect that residents there intend what the local rules always have provided.”98

Despite the plausibility of this assertion, opponents of national uniformity for its own sake have the stronger argument. For instance, the State Bar of California firmly and confidently contended in 1973 that adoption of the Uniform Probate Code in its entirety would not have constituted an improvement over the State’s existing probate system because the California Probate Code contained many desirable provisions.99 Moreover, the Bar argued that adoption of Uniform Probate Code section 2-103, which cuts off remote collateral relatives who take as heirs other than the surviving spouse in California, would

95. For example, the California Probate Code provides a five-year period in which qualified persons may claim escheated property. See CAL. PROB. CODE § 11903 (West 1993). See also 2 ARTHUR K. MARSHALL & ANDREW S. GARJ3, CALiFORNA PROBATE PROCEDURE WITH JUDICIAL CoUNcIL FORMS § 1925 (5th ed. rev. 1991) (under California Probate Code section 11903, “any person entitled to the property may claim it within five years from the date of the decree of distribution; if none so claims, such property vests absolutely in the state”).

96. For example, Professor Wellman commented:

[T]he day when we can afford to have different probate laws in fifty states has passed. People no longer live and die in one location of the country with the frequency of former times. Estates are more likely than not to involve assets or survivors located in several states. Lawyers need to be able to predict the state laws and procedures of other states and clients need to be relieved of the necessity to recast estate plans with every change of domicile or new acquisition of out-of-state land. The present variance in state laws which requires replanning of wills with each inter-state move or acquisition is not only a nuisance, it’s probably a positive hindrance to the free mobility of capital among the several states.

UPC DRAFT, supra note 3, at 6.


98. RESPONSE, supra note 50, at 4. See also id. at 6 (“It may be doubted that Californians generally have different intentions . . . [with respect to the possibility of inheritance by remote relatives] than the residents of other states.”) and Power, supra note 55, at 9-10 (“An argument that a particular state’s popular feelings are different from those generally prevailing would be indeed difficult to substantiate.”).

99. UPC CRITIQUE, supra note 28, at xxxiv.
have brought about "a very substantial change in California law" that would have affected the great majority of attorney-prepared wills in the state. In the Bar's estimation, the anticipated effect of this drastic change was negative because intestate property would, contrary to the presumed intention of many intestates, escheat more often to the state. Thus, although uniformity may be beneficial to mobile intestates, it should not be pursued blindly without serious consideration of its potential consequences on existing laws, wills, and expectations of decedents.

III. A Proposed Intestacy Statute

This Part proposes a model intestacy statute for heirs who are not the surviving spouse. Consistent with the background information and criteria discussed in Parts I and II of this Note, the statute satisfies each of the major modern intestacy goals and promotes a variety of beneficial effects discussed in Part III.B below.

A. The Proposed Statute

Intestate Share of Heirs Other than the Surviving Spouse:

Any part of the intestate estate not passing to the surviving spouse, or the entire intestate estate if there is no surviving spouse, passes as follows:

- (a) to the decedent's surviving descendant(s), in the manner provided by [the probate code section prescribing the jurisdiction's method of representation].
- (b) if there is no survivor under subsection (a), to the decedent's parent or parents equally.
- (c) if there is no survivor under subsections (a) or (b), to the descendants of the decedent's parent(s) in the manner provided by [the probate code section prescribing the jurisdiction's method of representation].
- (d) if there is no survivor under subsections (a) through (c), to the decedent's grandparent or grandparents equally.
- (e) if there is no survivor under subsections (a) through (d), to the descendants of the decedent's grandparent(s) in the manner provided by [the probate code section prescribing the jurisdiction's method of representation].


101. See id. at 251 (noting that "a great majority of wills prepared by attorneys incorporate the California intestate succession law").

102. See supra notes 48 and 89 and accompanying text.

103. UPC CRITIQUE, supra note 28, at 30.

104. Although beyond the scope of this Note, there are a variety of methods used to determine the proper distribution of intestate property among relatives who are not among the same degree of kinship to a decedent. For a discussion of some of these methods of representation among descendants, see WAGGONER ET AL., supra note 28, at 79-86.
provided by [the probate code section describing the jurisdiction’s method of representation].

(f) if there is no survivor under subsections (a) through (e), equally to the nearest lineal ascendants of the decedent’s grandparents; if there are no such lineal ascendants, equally to the surviving siblings of such ascendants.

(g) if there is no survivor under subsections (a) through (f), to the decedent’s next of kin who show clear and convincing evidence of a cordial relationship with the decedent.

(h) if there is no eligible survivor under subsections (a) through (g), equally to the surviving relatives of the decedent’s predeceased spouse who show clear and convincing evidence of a cordial relationship with the decedent.

B. Rationale for the Proposed Statute

The proposed statute is designed to achieve modern intestacy goals in a complete yet comprehensible fashion. Beneficial effects of the statute, described in detail below, include: (1) allowing an intestate’s “deserving” relatives by consanguinity and affinity to take by intestacy; (2) protecting an intestate’s financially dependent family members; (3) reducing the potential for unmeritorious claims; (4) limiting delays, expenses, and liabilities related to notice; (5) avoiding frequent escheat; and (6) fostering uniformity without sacrificing beneficial uniqueness.

(1) Allowing Deserving Relatives to Take by Intestacy

First and foremost, the proposed statute has an exceptionally strong capacity for allowing an intestate’s deserving relatives—and only those deserving relatives—to take by intestacy. This capacity is reflected in whom the statute includes and excludes from inheritance eligibility. The statute includes a broad group of relatives by consanguinity and affinity, which consists of the intestate’s: (a) descendants, (b) parents, (c) descendants of parents, (d) grandparents, (e) descendants of grandparents, (f) lineal ascendants of grandparents or the siblings of such ascendants, (g) next of kin who show clear and convincing evidence of a cordial relationship with the intestate, and (h) relatives of the predeceased spouse who show clear and convincing evidence of a cordial relationship with the intestate. The statute excludes the vast group of remote relatives descending from both the lineal ascendants of grandparents and the siblings of such ascendants unless such relatives provide clear and convincing evidence of a cordial relationship with the intestate. A cordial relationship, as discussed more fully throughout the remainder of this subpart, is one

105. For an in-depth discussion of deserving relatives, see discussion supra Part II.B.
that is evidenced by a history of amicable correspondence or meetings between the intestate and the potential heir.

Few legislators would quarrel with an assertion that an intestate's relatives in subsections (a) through (e) deserve to take by intestacy. The rationale is that such relatives probably are within the decedent's "affection-support" circle, that is, they are persons whom the decedent knew and had an interest in or who depended on or had the affection of the decedent.\textsuperscript{106} Likewise, although Uniform Probate Code supporters would probably disagree,\textsuperscript{107} relatives in subsections (f) and (g) may be equally if not more deserving of an intestate's bounty than some of the relatives in subsections (a) through (e). To illustrate, it seems more likely that great-grandparents, great-aunts, and great-uncles (subsection (f) relatives)\textsuperscript{108} would be in the intestate's affection-support circle than that distant descendants of the intestate's grandparents, such as first cousins twice or thrice removed (subsection (e) relatives), would be in the circle.

The proposed statute provides that in those rare cases in which no relative in subsections (a) through (g) survives the intestate, relatives of the intestate's predeceased spouse become eligible to take by intestacy under subsection (h) if those relatives can show clear and convincing evidence of a cordial relationship with the intestate. Although few states currently allow relatives by affinity to inherit,\textsuperscript{109} the proposed statute allows this because relatives who could meet the burden of persuasion are probably within the affection-support circle of the intestate. In fact, these relatives by affinity are likely to be closer to the intestate than are many of her remote next of kin\textsuperscript{110} or the public at large\textsuperscript{111} who would succeed to the estate if relatives by affinity were not allowed to inherit. Moreover, the fact that relatives by affinity cannot take unless there are no surviving eligible relatives by consanguinity reflects the prevailing notion that an intestate's

\textsuperscript{106} See generally discussion supra Part II.B.1 (describing relatives by consanguinity as one group of relatives believed to be deserving).

\textsuperscript{107} The Uniform Probate Code cuts off remote relatives tracing through great-grandparents. See supra note 88.

\textsuperscript{108} Because of longevity considerations, the surviving group of subsection (f) relatives, if it exists at all, will in most instances be limited to one or more of the intestate's great-grandparents, great-aunts, or great-uncles rather than more remote ancestors of the decedent's grandparents.

\textsuperscript{109} See discussion supra Part II.B.2.

\textsuperscript{110} In California, for example, next of kin are eligible to take by intestacy no matter how remote their relationship to the intestate. See CAL. PROB. CODE § 6402(f) (West 1993).

\textsuperscript{111} For example, the Uniform Probate Code allows escheat rather than succession by collaterals more remote than those tracing through the intestate's grandparents. See supra note 88.
blood relatives are more deserving of inheritance than are her steprelatives.

As a final comment on the proposed statute's strong capacity for allowing an intestate's deserving relatives to take by intestacy, the statute's requirement that next of kin show clear and convincing evidence of a cordial relationship with the intestate will ensure that any remote kin who take by intestacy will indeed be deserving of their prizes, that is, such kin will not be laughing heirs. Possible criticisms of this provision are (1) that inclusion of remote kin as possible heirs will encourage litigation and (2) that the high burden of persuasion will lengthen and complicate any such litigation. The responses to these criticisms are (1) that litigation with respect to this provision will be rare because the provision itself will apply only in unusual instances in which closer blood relatives do not survive the intestate and (2) that the high burden of persuasion can easily be complied with in cases in which the remote kin are truly deserving and may dissuade those with weak relationships to the intestate from pursuing unmeritorious claims.

(2) Protecting Financially Dependent Family Members

The proposed statute protects an intestate's financially dependent family members by making such members eligible to take by intestacy either as of right, if the members fall within categories (a) through (f), or upon proper proof, if the members fall within category (g). This achievement is important not only to the members protected, who often include the intestate's minor children and perhaps her aging parents, but also to the state and other relatives of the intestate who would otherwise become responsible for her financially dependent relatives in her absence.

(3) Reducing the Potential for Unmeritorious Claims

Subsection (g)'s requirement that next of kin show clear and convincing evidence of a cordial relationship with the intestate reduces the potential for unmeritorious litigation brought by kin who clearly cannot meet that burden, such as those whom the intestate obviously did not know or like. This reduction in litigation could save a significant amount of time and resources of the court, attorneys, and others.

112. Decisions as to whether the burden of persuasion has been met might be left solely to the probate court's discretion. Alternately, a state adopting the proposed intestacy statute might adopt an additional statute that prescribes the bases upon which the court's decision should rest. See, e.g., CAL. PROB. CODE § 6451 (West 1994) (prescribing the eligibility requirements for inheritance based upon equitable adoption).

113. See generally supra note 35 and accompanying text.

114. See supra text accompanying note 20.
involved in probate proceedings in which close relatives fail to survive the intestate while still preserving the opportunity for deserving kin to prove the requisite relationship and take by intestacy. It should be noted that although proving the requisite relationship would consume time, the time required would be minimal in the most meritorious cases and probably only moderate in the most questionable cases because of the variety and potentially simple nature of the proof that might be offered, such as evidence of amicable written correspondence between the claimant and the intestate, or perhaps photographs or other evidence of recent cordial activities in which the claimant and intestate had engaged together.

(4) Limiting Delays, Expenses, and Liabilities Related to Notice

Subsection (g) of the proposed statute could limit the delays, expenses, and liabilities associated with the personal representative's duties of locating and notifying prospective heirs. This beneficial limitation would stem from the statute's indirect relaxation of the "reasonable diligence" standard commonly used in notice statutes to describe the personal representative's duty to locate an intestate's heirs. The relaxation would occur because the personal representative could limit her search to only those kin who appear to have, at a bare minimum, at least interacted with the intestate and would thus have some chance of establishing the proof of a cordial relationship. Consequently, the personal representative would be relieved of the costly duty of, and potential liability associated with, searching extensive family trees to locate even those relatives who did not know and were unknown by the intestate.

(5) Avoiding Frequent Escheat

Subsections (f), (g), and (h) of the proposed statute avoid frequent escheat by extending eligibility for inheritance to the intestate's remote, yet nevertheless deserving, blood relatives and to her deserving relatives by affinity. As discussed in Part II.D, avoidance of escheat in this manner can allow one or more deserving relatives to benefit substantially through inheritance of even a modest estate rather than allowing the state to benefit minimally through escheat of the same estate. It should also be mentioned that the statute does not attempt to avoid escheat altogether simply for the purpose of avoiding escheat. Rather, the statute allows deserving relatives to take in preference to the state. If there are no deserving relatives, then the statute allows the state to take in preference to distant, undeserving

115. See discussion supra Part II.C.
116. See supra text accompanying notes 49-51.
relatives that would otherwise take under a typical statute providing for unlimited inheritance among collaterals.

(6) Fostering Uniformity Without Sacrificing Uniqueness

The proposed statute fosters uniformity between itself and intestacy statutes of many jurisdictions without sacrificing the content of its own special features. The statute is composed of subsections (a) through (e), which are similar in substance and arrangement to subsections currently found in many jurisdictions, and subsections (f) through (h), which are wholly unique provisions.

Inclusion of the popularly adopted subsections fosters uniformity between the proposed statute and the statutes of many jurisdictions. This uniformity is desirable because it creates predictability for mobile Americans who rely on their state's intestacy statutes to dispose of part or all of their property at death.117 At the same time, inclusion of the unique subsections is desirable because they achieve the highly beneficial effects discussed above.

As a final observation, because of the wide range of possible heirs included under the popularly adopted subsections (a) through (e), most intestacy cases will be resolved under the popularly adopted subsections without resort to the unique subsections (f) through (h). Consequently, the predictability benefits can be realized in most cases in which predictability is desirable, and the unique benefits of subsections (f) through (h) can be realized when the popularly adopted subsections do not apply.

Conclusion

The laws of intestate succession are, and should be, of great concern to the public. Intestacy statutes affect not only decedents who die without comprehensive and valid wills or who rely on intestate succession to dispose of their property, but also the surviving relatives of such decedents, the state, and the public at large.

Intestacy provisions for heirs who are not the surviving spouse are of particular concern because these provisions often dispose of the bulk of an intestate or testate estate. Modern goals that underlie these provisions include: allowing an intestate's "deserving" relatives by consanguinity and affinity to take by intestacy; satisfying a decedent's presumed intentions and society's interests; limiting delays, expenses, and liabilities associated with the personal representative's duties of locating and notifying prospective heirs; fostering simplicity, comprehensibility, and uniformity of intestacy statutes; and avoiding frequent escheat.

117. See discussion supra Part II.E.
To date, no state legislature has adequately promoted each of these goals within its intestacy provision for heirs other than the surviving spouse. It is likely that this inadequacy results from the failure of legislators to conduct fundamental analyses of each of these goals prior to adopting or revising provisions for heirs who are not the surviving spouse. Use of the goal-based approach prescribed in this Note will ensure that new or revised intestacy statutes promote achievement of the beneficial effects that underlie modern intestacy goals, thus serving the interests of both the decedent and those who survive her.