Dying without a will in Barbados: who inherits?

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Someone in your family has died without a will, and now the questions start. Who gets the house? Does the partner they lived with for twenty years get anything? What about the child who was never on the birth certificate?

You may think the answer depends on who nursed the deceased through their last illness, who lives in the house now, or what they said at the kitchen table about who should get what. It does not. In Barbados, the Succession Act, Cap. 249, fixes the shares, and the one fact that can change which rules apply is the date of death.

This guide walks through those rules in the order a lawyer would apply them. It ends with a real case in which a partner of several years lost her claim to be treated as a spouse, and explains what both sides of that dispute can learn from it.

The short answer

Who survives the deceased	Who inherits	Succession Act
A spouse, and no children or other relatives	The spouse takes everything	s. 49(1)
A spouse and other relatives, but no children	The spouse takes two-thirds; the rest is shared equally among the next-of-kin	s. 49(2)
A spouse and one child	The spouse takes two-thirds; the child takes one-third	s. 49(3)(a)
A spouse and two or more children	The spouse takes one-third; the children share the other two-thirds equally	s. 49(3)(b)
Children, but no spouse	The children share everything equally	s. 49(5)–(6)
No spouse or children, but a parent	The parents share equally, or the surviving parent takes everything	s. 50
None of the above, but brothers or sisters	The brothers and sisters share equally	s. 51
None of the above	The nearest relatives by blood share equally	ss. 52–53
Nobody at all	The estate goes to the Crown	s. 55

The steps below explain each part of that table and the traps inside it.

Step 1: Check the date of death

The Succession Act came into force on 13th November 1975. If the person died before that date, the law in force before the Act still governs their estate (s. 106(5)). Under the old law, land passed to the heir-at-law, which usually meant the eldest son.

This matters more than people expect. A great deal of "family land" in Barbados still sits in the name of someone who died in the 1950s or 1960s, and the question of who owns it today begins with the pre-1975 rules. In *Douglin v Daniel* (High Court, 2016), a case about a death in 1959, the court applied the old rule that until an administrator is appointed, the land vests in the heir-at-law (para. [17]).

Step 2: Work out whether there is a "spouse"

A husband or wife who was legally married to the deceased is a spouse.

The Act also treats some unmarried partners as a spouse. Under section 2(3), a man and a woman count as spouses if they were living together as husband and wife "for a period of not less than 5 years immediately preceding the date of" the death. Three conditions come with that:

- Both partners must have been single. Single includes widowed and divorced (s. 2(4)).
- The five years must run right up to the date of death.
- Only one such relationship counts (s. 2(5)).

In practice, this means a partner of many years may take nothing as a spouse if the deceased was still legally married to someone else. That partner may still have a claim as a dependant (see Step 6).

The five years are also where both of the cases in this guide were decided. The partner claiming to be a spouse has to prove it, and the case study below shows how that plays out in court.

Step 3: Apply the shares

If there is a spouse, section 49 decides the split with the children. If one of the children died before the parent but left children of their own, those grandchildren step into their parent's place and share what that child would have taken (s. 49(4), (6)).

If there is no spouse and no children or grandchildren, the Act moves outward in a fixed order: parents (s. 50), then brothers and sisters, with the children of a sibling who has died taking that sibling's share (s. 51), then the nearest relatives by blood (ss. 52–53).

If nobody qualifies, the estate "shall vest in the Crown as bona vacantia" (s. 55). The Minister responsible for Legal Affairs has power to waive the Crown's claim in whole or in part.

Step 4: Children born outside marriage inherit equally

Under the Status of Children Reform Act, Cap. 220, the distinction between children born within and outside marriage is abolished, and all children are of equal status (s. 3). It does not matter whether the child was born before or after 1st January 1980 (s. 6). What matters is the date of death. The estate of anyone who died without a will before 1st January 1980 is distributed as if the Status of Children Reform Act had never been passed (s. 17(3)). So for a death between 13th November 1975 and 1st January 1980, the Succession Act shares still apply, but a child born outside marriage does not share on the same footing.

The practical question is proof. Where the father is not named on the birth certificate, section 7 of that Act sets out the circumstances in which a man is presumed to be the father. If paternity is disputed, get advice early, before the estate is distributed.

Step 5: Half-brothers and half-sisters count the same

Relatives of the half-blood are treated the same as, and inherit equally with, relatives of the whole blood (s. 54). A half-sister shares equally with a full brother.

Step 6: Dependants who are left out can apply

The fixed shares can leave out people the deceased was supporting. Section 57 defines a dependant to include:

- a partner living with the deceased as husband or wife who was wholly or mainly maintained by them, and
- a child under 18, or a child unable to maintain themselves because of a disability, who was wholly or mainly maintained by, or living with, the deceased.

A dependant can ask the court for maintenance out of the estate. The deadline is strict: the application "shall be made within 12 months from the first taking out of the representation of the intestate's estate" (s. 58). The clock starts when the first grant of administration is issued, so a dependant should not wait to be told about it.

What the shares do not tell you

The Act says who is entitled. It does not give any family member the right to take over a particular house or bank account. First, someone has to be appointed administrator by the court. The administrator collects the assets, pays the debts, and only then distributes what is left.

Living on the property does not increase anyone's share either. In *Sobers v Bannister*, a widow and her family stayed on the land for decades after her husband died without a will in 1955, and a daughter built a restaurant there in 2006. Neither became owner of the land by being there. The daughter was there with permission, and the Court of Appeal held that "possession with permission undermines and destroys a claim by way of adverse possession".

Case study: "the common law spouse"

In *Bowen v Wickham* (High Court, 2020), Anthony Wickham died without a will on 5th December 2018. At his death he was living at London Bourne Towers with Stephna Bowen, and he left two adult sons (paras. [1]–[2]). Ms Bowen asked the court to declare her his "common law spouse" (para. [4]).

A great deal turned on that declaration. With a spouse and two children, section 49(3)(b) gives the spouse one-third of the estate and the children the other two-thirds. Without a spouse, the two sons take everything between them.

The only real question was whether she had lived with him for at least five years right up to his death (para. [22]). Her first affidavits said sixteen years. She later filed amended affidavits saying nine (para. [8]), and explained the change as the result of grief (paras. [24]–[25]). A neighbour who had lived in the building since 2000 said she first saw Ms Bowen in 2014 and that Ms Bowen moved in sometime in 2015 (paras. [43]–[44]).

Justice McCarthy held that it was for Ms Bowen to prove the five years (para. [57]), and he found the evidence of Ms Bowen and her witnesses "implausible" (para. [58]). He was not persuaded that she had lived with Mr Wickham for the minimum period (para. [63]). He declared that she was not his spouse, dismissed her application, and held that the two sons were entitled to apply for the grant (para. [64]).

The same thing happened ten years earlier in *Browne v Edghill* (High Court, 2010). There, a woman said her partner had come to live with her at her mother's house in 1994, six years before he died in 2000 (para. [9]). When asked about their daily life, she could not say what hours he worked (para. [37]). The court found as a fact that he had not left the house where he lived with his niece until after she did, and dismissed the claim (paras. [76], [78]).

What you can take from these cases

If you are the partner:

- The claim is about dates, and you have to prove them. Start by gathering records showing you both at the same address from the start of the five years: bills, bank statements, official correspondence.
- Get your account right the first time. In *Bowen*, changing the figure from sixteen years to nine did lasting damage, whatever the reason for it.
- Expect the court to ask about ordinary details of the life you shared. In *Browne*, not knowing his working hours counted against her.
- Think about who can speak for you independently. In *Bowen*, the evidence of a neighbour with no stake in the estate went against the claimant, while her own witnesses were family members whose accounts had changed.

If you are the family:

- The partner carries the burden of proof. You do not have to disprove the relationship, but independent evidence of when it began can decide the case.
- If a partner does not qualify as a spouse, look at Step 6. They may still apply as a dependant, and that clock is running from the date of the grant.

When to get advice

Speak to an attorney-at-law before anything is distributed if:

- the death was before 13th November 1975,
- a partner is claiming as a spouse, or as a dependant,
- a child's paternity is not recorded or is disputed, or a child born outside marriage is claiming in an estate where the death was before 1st January 1980,
- one branch of the family is living on the property and the others are not, or

- a year is close to passing since the grant was issued and a dependant has not yet applied.

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Authorities

- Succession Act, Cap. 249, ss. 2(3)–(5), 49–55, 57–58, 106(5)
- Status of Children Reform Act, Cap. 220, ss. 3, 6, 7, 17(3)
- *Bowen v Wickham*, CV 0185 of 2019 (McCarthy J, 22nd September 2020)
- *Browne v Edghill*, No. 1021 of 2005 (Richards J, 7th January 2010)
- *Douglin v Daniel*, CV0051 of 2016 (Beckles J, 8th March 2016)
- *Sobers v Bannister*, Civil Appeal No. 35 of 2012 (Court of Appeal, 24th July 2020), para. [71]