

The Law and You If You Don't Have a Will, What Happens to Your Estate?

I often get asked: "What happens if I don't have a Will?"

Depending on the size of your estate and the number of your children or other heirs, you may not need a will. I generally recommend a will, since most of the time it makes sense to have one.

But, if you don't have a will or if you procrastinate and put off preparing or signing a will, there is still hope that your estate passes to your heirs as you intend.

If you die without a valid will, you are said to have died intestate. Since the majority of persons die without a will (it is estimated that only 25% of the population has a will), laws have been developed to deal with these situations. They are known as intestate laws

Most states have enacted the Uniform Probate Code. Utah is one of those states. If you die without a valid will, there is a predetermined method for the distribution of your estate. Title 75 of the Utah Code contains the Uniform Probate Code.

Chapter 2 of Title 75 contains the code for Intestate Succession and Wills; Part 1 of Chapter 2 deals with Intestate Succession. This Part sets forth the rules on how your estate would be distributed if you die having no valid will.

In the preceding two paragraphs, I used the word "valid" to qualify a will. That is, not all wills are valid. Simply because you have a will, it may not conform to the formalities required by law. If your will is not valid, then

it is as though you had no will at all. In that case, your estate follows the rules in Part 1, entitled Intestate Succession, and which states at its beginning:

"Any part of a decedent's estate not effectively disposed of by will passes by intestate succession to the decedent's heirs as provided in this title, . . ."

In the limited space allowed for this article, I am not able to fully treat the issue of how your estate would be distributed under intestate succession. However, I will attempt to provide a few highlights.

If you rely on the Probate Code for the distribution of your estate, you should first obtain a copy of it and study it carefully. The Probate Code is amended from time to time, and your understanding of it must be updated when changes are enacted.

First, if your spouse survives you and you have no children from any other spouse, other than the one that survives you, your entire estate goes to your surviving spouse.

Second, if you have children from a previous spouse, then your surviving spouse receives the first \$50,000 of your estate plus ½ of your remaining estate. Your children then share equally in that part of your estate not passing to your surviving spouse.

However, the rules on distribution become a bit more complicated if two or more of your children fail to survive you. Distribution is made on the basis of "per

capita at each generation.” What this means is that your grandchildren will be treated equally.

An example may help. Suppose that your spouse predeceases you. That is, she dies before you. Further suppose that you have four children, two of whom predecease you. Prior to their death, however, suppose that one of them had three children and the other had five children, representing eight grandchildren.

In this example, ½ of your estate would go to the two surviving children and ½ would go to the eight children of the predeceased children. Under the new “per capita” concept, all eight of your grandchildren would be treated equally. Under the old rule, replaced in 1998 and called “*per stirpes*,” your eight grandchildren would not have been treated equally.

If you don’t have a Will, you have no control over who takes charge of your estate. In contrast, if you have a Will, you can nominate the person you want to act as your Personal Representative and administer your estate.

Does this sound confusing? Well, it may seem so, but it generally works the way most people would want their estate to be distributed. The better approach in planning your estate, however, is to rely on solid legal advice by contacting an Elder Law Attorney. To locate an Elder Law Attorney, check with the National Academy of Elder Law Attorneys at (520) 881-4005, or your local Yellow Pages.

YOUR QUESTIONS: Do you have a particular question that you would like answered? To better serve the regular readers of this Elder Law Column, please direct your questions in writing to Michael A. Jensen, Elder Law Attorney, PO Box 571708, Salt Lake City, Utah 84157. From time to time, I will attempt to answer some of those questions. Also, you may send your questions to:

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