BRUNER
WEALTH MANAGEMENT, LLC
SOUND AND INNOVATIVE FINANCIAL STRATEGIES
Office 717.285.3344 www.brunerwealth.com
22 W. Main Street, Mountville, PA 17554

When Someone Dies Without a Will

Where do things proceed from that point?

Provided by Robert W. Bruner

Every day, people die intestate. In legalese, that means without a will. This opens the door for the courts to decide what happens with their estates.

When no valid will exists, state intestacy laws dictate how assets are distributed. These laws divide an estate evenly (or equitably) among heirs. Any assets held in joint tenancy go to the joint owner. Assets held in a trust transfer to the trust beneficiaries (with spouses getting a share of those assets in some states). Community property goes to a spouse or partner in community property states.[1]

Simple, right? Unfortunately, the way assets transfer under these laws may not correspond to the wishes of the deceased person. Did the decedent want some of his or her estate to go to a charity or a person close to them? These laws will not allow that. State law will also decide who the executor of the estate is, since the decedent never named one.[2]

If the deceased person designated beneficiaries for his or her retirement accounts and life insurance policy, those retirement accounts and insurance proceeds should transfer to those beneficiaries without dispute, even when no will exists. When life insurance policies and retirement accounts lack designated beneficiaries, then those assets are lumped into the decedent's estate and subject to intestacy laws.[2]

Most people have specific ideas about who should inherit what from their estates. To articulate those ideas, they should write a will – or better yet, they should draft one with the help of an attorney. Anyone who cares about the destiny of his or her wealth should take this basic estate planning step.

For a last will & testament to be valid, it must meet three important tests. It must be created by a person of sound mind. It must express that person's free will – that is, it cannot be written or drafted under coercion or duress. Lastly, it must be signed and dated in the presence of two or more unrelated people who stand to inherit nothing from that person's estate.[1]

Many wills are signed in the presence of notaries; although, a will does not have to be notarized to be legally valid. Some wills are self-proving – they have an attached, notarized affidavit, which acknowledges that all three tests noted in the preceding paragraph have been met. When this affidavit accompanies a will, there is no need to track down the parties who witnessed the signing and dating of the document years before.[1]

A last will and testament should be formatted and printed using a computer and printer; at the very least, it should be typed. Handwritten wills may not pass muster in some probate courts.[1]

When an individual dies intestate, the future of his or her estate is largely up to the courts. A basic, valid will stating his or her wishes may prevent that fate.

Robert W. Bruner may be reached at 717-285-3344 or fyi@brunerwealth.com.
www.brunerwealth.com

Citations.
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