



Sabrina Winters

Attorney at Law, PLLC

SO WHAT IF I DON'T HAVE A WILL OR TRUST IN PLACE...BIG DEAL!

By: Sabrina Winters, Attorney at Law

Many people assume that when a person passes away, that person's property is automatically transferred to the spouse or "next of kin". I have had some clients even think that the state takes it all! In North Carolina, when a person dies without a Will, marital relationships, children, and surviving parents may all need to be considered, depending upon the circumstances.

According to North Carolina law (as of 2011), if a person dies without a Will (also called "Intestate"), a married man or woman with children will have their real property (house or rental property for example) distributed by the Court, with $\frac{1}{2}$ passing to the child and $\frac{1}{2}$ passing to the surviving spouse. If there is more than one child, real property will be distributed $\frac{1}{3}$ to the spouse and $\frac{2}{3}$ equally among the remaining children. Personal property (bank accounts for example) is distributed in a similar manner, with the first \$30,000 worth of the estate passing to the surviving spouse.

When a married person passes away with no children, but has surviving parents, $\frac{1}{2}$ of real property goes to the parents, while $\frac{1}{2}$ is distributed to the spouse. The first \$50,000 worth of personal property is assigned to the spouse, with $\frac{1}{2}$ of the remainder to the parents and $\frac{1}{2}$ to the spouse. If no parents are surviving, all of the estate passes to the spouse.

In addition, a single man or woman with children will have their estate divided equally between the surviving child or children. A single person with no children will have their estate distributed entirely to their parents, to share equally if they survive. If there are no surviving parents, the estate will be divided equally among brothers and/or sisters. Finally, if there are no surviving relatives, the entire estate is distributed to the state of North Carolina.

As you can see, it is not always the case that a spouse and children share in the estate. There could be scenarios where a parent and a minor child could potentially own real property together. What happens then? Well, since a minor cannot own real property in North Carolina, there would probably have to be a court proceeding to appoint a guardian and potentially even a trust

15720 John J. Delaney Drive, Suite 300
Charlotte, North Carolina 28277
(704) 843-1446
www.ncestateplanninginfo.com
swinters@sabrinawinterslaw.com

to hold the child's share of the home. Not something you want your family to be dealing with, especially during such a difficult time.

Or, what if that single person with no children has a parent who may be trying to qualify for Medicaid? That inheritance will increase the value of that parent's estate and potentially have a negative affect on the Medicaid qualification.

The best way to resolve these potential distribution problems is to take the time to put something in writing. Have a Last Will and Testament or Revocable Living Trust in place so that your wishes can be carried out and avoid as much conflict as possible in your family's life during a time of grieving and moving on.