

## MISSOURI'S DEFAULT ESTATE PLAN

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Did you know that Missouri has provided an estate plan for you? If you do not have your own estate planning documents, you may be surprised to find that Missouri has provided a default estate plan for you, and you may not like the terms of Missouri's estate plan.

### The Basics

**Spouse and Descendants.** The biggest shock to most people is Missouri's estate plan if you are married and have children. If you are married and you have "mutual" children (meaning that all children are children of both you and your spouse, rather than children from a prior marriage), then Missouri's estate plan provides that your spouse receives only the first \$20,000 of your assets plus  $\frac{1}{2}$  of the balance of your assets. The remainder of your assets passes to your children.

Similarly, if you are married and one or more of your children are from a previous relationship, then  $\frac{1}{2}$  of your assets will pass to your spouse and  $\frac{1}{2}$  of your assets pass to your children. (The only difference is that your spouse does not receive the first \$20,000 off the top.)

In either scenario, your spouse will be deprived of the use of  $\frac{1}{2}$  (or almost  $\frac{1}{2}$ ) of your assets on your death. Unless your spouse has a substantial amount of assets in his/her name, this is not the result that most people expect or want.

**Spouse and No Descendants.** If you are married and do not have children or more remote descendants, then all of your assets will pass to your surviving spouse on your death.

**No Spouse and Descendants.** If you are not married at the time of your death, your assets will pass to your descendants on your death. This is true even if you were previously married.

**No Spouse and No Descendants.** If you are not married at the time of your death, and you do not have any children or more remote descendants, then all of your property will pass to your father, mother, brothers and sisters (or their descendants) in equal parts. If none of them survives you, then all of your property will pass to your grandfathers, grandmothers, uncles and aunts (or their descendants) in equal parts. If none of them survives you, then all of your property will pass to your great-grandfathers, great-grandmothers (or their descendants), in equal parts; and so on, until at a certain point your property will escheat to the state.

### Additional Allowances

Missouri law provides for some additional allowances for a surviving spouse or children, but these allowances do not generally amount to a significant value. These include an allowance for "exempt" property (including the family bible and other books, one automobile or other passenger motor vehicle,

clothing, and certain household furniture and furnishings), a support allowance for up to one year (limited to \$6,000 per year unless the Probate Court authorizes more), and a homestead allowance (not to exceed \$15,000, but this reduces the shares of the spouse or descendants receiving it).

### **Estate Planning**

If you want to change Missouri's default estate plan, you simply need to have a Will or Revocable Trust prepared for you. Even if Missouri's default estate plan sounds acceptable to you, there are many other reasons why you may need or want a Will or a Revocable Trust. For example, if you have minor beneficiaries, you should name someone to manage the assets for them until they reach an age at which they can legally manage the assets themselves and, if the minor beneficiaries are your children, you should name guardians. Additionally, estate planning is necessary if you want to plan for creditor protection or if you have special circumstances, such as a child with special needs or a child who is not good at managing money. By having a Will or Revocable Trust, you are able to detail who will receive your assets and whether those assets will pass outright or in trust for your family, friends or favorite charities.

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