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SOUTH FLORIDA
ESTATE PLANNING LAW
INSIGHT AND COMMENTARY ON ESTATE PLANNING, WILLS, TRUSTS, PROBATE & TAXATION

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Posted on March 14, 2009 by David Shulman

Don't let the state decide how your property is disposed of upon your death

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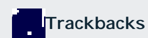Trackbacks

I meet people all the time -- single people, married people, with and without children who have none of their estate planning documents in place. There are a number of reasons as to why people don't get their documents in order -- worry about the cost is often a reason given (although it does not have to be expensive to do). For some, it's just general procrastination. It's on their list of things to do along with lose 30 lbs or clean out the garage. Yet for others, it is the fear of thinking about their own mortality or the misguided belief that a tragic and sudden death could never happen to them. But if you have your own property, and you want to decide for yourself how your property is distributed after your death instead of having the state decide for you then you generally need a Will.

Dying with out a Will is known as being intestate. Each state has its own laws of intestacy, determining how an intestate decedent's property is disposed of upon their death. In Florida, the intestacy provisions are set forth in Chapter 732 of the Florida Statutes. Under the rules:

1. If you are married and have no descendants (children, grandchildren, etc.), your spouse receives your entire intestate estate. It doesn't matter if you were married for 3 days or 30 years.

2. If you are married and have descendants and all of your descendants are also children of your spouse (meaning that you have no living children or grandchildren from another relationship), then your spouse receives the first $60,000 of your intestate estate, plus 1/2 of the value of the remaining intestate estate, with the balance being distributed among your descendants "per stirpes". If your intestate estate is $60,000 or less, then your surviving spouse receives it all.

David Shulman is an attorney located in South Florida who focuses his practice on Wills, Trusts and Estates, and TaxMore...

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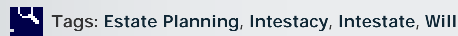
3. If you are married and have any descendants who are not descended from your surviving spouse (e.g. you have children from a previous marriage), then your intestate estate is split 1/2 between your surviving spouse and 1/2 among your descendants "per stirpes". Your spouse does not receive the first $60,000 off of the top.

4. If you are not married, and have descendants, your intestate estate is distributed to your descendants, "per stirpes".

5. Then, if you do not have descendants, there are a series of "alternate takers" depending on who in your family is surviving. It will go first to your parents, then your siblings, then to your paternal and maternal grandparents equally, then to your aunts and uncles, and on down the line.

6. Then, Section 732.107(1) provides the worst possible scenario, "When a person dies leaving an estate without being survived by any person entitled to a part of it, that part shall escheat to the state,"

The term "escheat" means that your property become the property of the state. Remember, under the law "friends" have no rights to your property after you die. If you have property and no family and lots of friends, unless you have a Will (or have made some other provision for the dispostion of your property such as a Pay on Death Account), your property will go to the state upon your death. And if you do have family, you need a Will so that **you** can decide how your property is divided instead of having the law and a judge make that choice for you.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South Florida Estate Planning Law

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