

WILLS AND ESTATE PLANNING

As we evolve in our profession as individual doctors, we need to protect ourselves and families from uncertain events in our lives that may occur. Having a sound estate plan is essential to the survival of you, your practice and family. One such part of estate planning is your WILL. Unfortunately, a lot of people die without a valid will. A will can be used, when executed, directs the disposition of your estate at death. The term “Intestacy” deals with state statutes that govern distribution of the property of a person who dies without a valid will or whose will does not completely dispose of his estate. In most states, the rules are the same for real and personal property. Heirs and next of kin are synonymous and describe persons who take either real or personal property by intestacy. Generally, the state where a person lives when death occurs determines the disposition of **personal property**. The disposition of **real property** is determined by the law of the state where the real property is located.

Intestacy statutes (or wills) apply only to a decedent’s probate estate. This consists of assets that pass by will or inheritance and are subject to administration by the decedent’s personal representative, (cash, real estate, and personal items). Non-probate assets pass under contract, (life insurance proceeds, trust assets, etc.).

If a will is valid than it rules, but if there was no will or the will was not valid or does not make a complete disposition of the decedent’s property, than the intestacy succession statute applies. Again for **personal property**, remember the law of the decedent’s state where they lived governs. For **real property**, the law of the state where the property is located governs.

The most asked question is, “How should the property be distributed”? Some general rules are as follows:

1. Spouse usually takes half or a third if there are decedents, if not, all distribution of assets goes to the spouse
2. Children take all if there is no surviving spouse or a smaller amount if there is a surviving spouse.

These rules apply to “separate property”. Different rules apply to community property. Keep in mind if your state is a community property state, the spouse already owns on half of all community property. Some states that have community property are:

1. Louisiana
2. Texas
3. New Mexico
4. Arizona
5. California
6. Washington
7. Idaho
8. Nevada

The definitions of separate and community property vary from state to state, but are usually basically very similar.

SEPARATE PROPERTY: Property owned by a spouse before marriage or properly acquired during marriage, by donations or inheritance. In Arizona, California, Nevada, New

Mexico and Washington the income from separate property is separate. In Idaho, Louisiana and Texas, the income from separate property is community property.

COMMUNITY PROPERTY: All property acquired during marriage that is not separate property. Under this rule, “all property upon divorce or death is presumed community property. The burden of establishing that a particular asset is separate property is on the party so contesting.

QUASI-COMMUNITY PROPERTY STATUTE: Property acquired by one spouse while living in another state. Idaho and California have Quasi Community Statutes. In effect, the acquiring spouse has the power to dispose of property acquired outside the state of residence, but may only dispose of one half of the interest in the property. The other half passes to the surviving spouse. Under the Quasi Community Statute, if there is no will the property passes to the surviving spouse. There are other states that have the Quasi Community Statute that applies to divorce, but not to the death of a spouse. Texas, and Arizona are two of those states that apply the statute to divorce cases.

INHERITANCE RIGHTS OF CHILDREN:

1. Adopted Children: They become the child of the adopted parent, and in most cases lose the right to inherit from the natural parents
2. Children born out of wedlock: Inherit from the mother and her kin, but need paternal proof to inherit from the father.
3. Step Children: May not inherit from the step-parents absent certain circumstances.
4. Grandchildren: May inherit only if they are the only surviving decedent

In cases of simultaneous deaths, all jurisdictions, except Louisiana and Ohio have enacted the “**Uniform Simultaneous Death Act**”. Under this act, depending upon the priority of death and there is no sufficient evidence that the parties died otherwise than simultaneously, the property of each person shall be disposed of as if one spouse had survived.

Example: If (a) property owner and (b) beneficiary die simultaneously, the act would cause (a)’s property to pass under (a) by will or intestacy to (a)’s kin, rather than through (b)’s estate or to (b)’s kin. Under the Uniform Probate Act, which deals with deaths or by quick succession, by providing that a person must survive the decedent by 120 hours in order to take as heir or beneficiary.

WHAT CONSTITUTES A WILL:

A will is an instrument executed in accordance with certain formalities that directs the disposition of a person’s property at death. It acts as a transfer of title of real and personal property. It only is effective upon death of the maker and is sometimes referred to an ambulatory document. It has no operative effect during the maker’s lifetime. It is fully revocable or amended at any time.

FORMAL REQUIREMENTS OF A WILL:

1. Is the will in writing
2. Executed with testamentary intent (intent and wording of the maker at the time of execution.
 - a. Intent to dispose of property
 - b. Disposition to occur only upon death of the maker
 - c. Did the maker have capacity to make the will
 - d. That the will was executed free of fraud, duress, and undue influence.
 - e. Have all the state statutory requirements been met?
 - f. Was the will duly executed and witnessed.

REVOKING A WILL:

1. By law- Changes in a will may revoke all or part depending on state law
2. By executing another will, revoking the previous one
3. Physical destruction: tearing up, burning or writing "Cancel across the face of the will.

In most cases a complete, formally executed will do not need other documents or act to administer the to the decedents estate. There are grounds for contesting or challenging a will and usually involve the following:

1. Was the will properly executed?
2. Was it revoked?
3. Did the maker lack the capacity?
4. Was there lack of intent?
5. Was there undue influence, fraud or duress?

A person may contest or challenge a will only if they are interested parties, (direct interest in the estate). There can be a no-contest clause in a will, called an "**Interrorem**". This provides that any person who contests the will shall forfeit all interest in the estate.

STEPS IN ADMINISTRATION OF THE ESTATE:

1. Opening estate proceedings
2. All proceedings subject to court supervision and control
3. Jurisdiction-State of decedent's death

There are fourteen (14) states that have adopted the Uniform Probate Act: Alaska, Arizona, Colorado, Idaho, Maine, Michigan, Minnesota, Montana, Nebraska, New Jersey, New Mexico, North Dakota, Pennsylvania, and Utah.

The importance of estate planning is essential to protect yourself and your family. Make sure you consult with the proper person to provide you with all your financial needs in planning your future.

