

“Uncertainty will always be part of the taking charge process.”

- Harold S. Geneen

BURNS AND BURNS, P.C. IS AN AV RATED LAW FIRM THAT REPRESENTS MULTI-GENERATIONAL FAMILIES AND BUSINESS OWNERS WITH THEIR ASSET PROTECTION, REAL ESTATE, AND ESTATE PLANNING NEEDS.

What Happens When a Person Dies Without a Will?

Introduction

When a person dies without a valid will, they are said to have died “intestate.” Conversely, when a person dies with a valid will they are said to have died “testate.”

When a person dies intestate, they are in effect relying on the State of Arizona to divide and distribute their personal belongings. As a result and despite the state’s best efforts, the State sometimes distributes the deceased’s personal belongings in a manner that would be inconsistent with the deceased’s desires. As a result, it is generally advisable for each person to execute a will and trust to not only avoid inconsistent distributions but to also avoid probate, especially when the cost to probate an estate can exceed the cost to execute a will and trust.

Intestate Succession (Distribution Order When Married)

Intestate succession describes the order in which the state will distribute a person’s assets following their death.

1) If the decedent (a.k.a. deceased person) is survived by a spouse but without any descendant(s) (e.g. children), all of the decedent’s property will pass to the surviving spouse.

2) If the decedent (a.k.a. deceased person) is survived by a spouse and descendant(s) (e.g. children) who are also the descendants of the

spouse, all of the decedent’s property will pass to the surviving spouse.

3) If the decedent (a.k.a. deceased person) is survived by a spouse and descendant(s) (e.g. children) some of whom are not the descendants of the surviving spouse (e.g. children from a prior relationship), the decedent’s property will be divided as follows: a) the surviving spouse will receive one half of the decedent’s separate property and b) the decedent’s descendants will split one half of the decedent’s separate property and one half of the decedent’s community property interests.

In today’s world, it is not uncommon for individuals to have children by a prior marriage or relationship. Unfortunately, in these situations, absent a valid will, the current spouse of the descendant can be held hostage by decedent’s descendants from a prior relationship.

Example of Caution – Consider the following: a man has one child of a prior relationship before remarrying for the second time. Following his second marriage, the man purchases a home with his wife and they have a child together. Shortly thereafter, the man is killed in a car accident. Since the man died without a will, his child from his prior relationship could potentially force the decedent’s current wife to sell her home in order to satisfy the intestate inheritance claims. As a result, individuals with children from a prior relationship should not hesitate in executing their personalized will and trust to avoid these types of issues.

Intestate Succession (Distribution Order When Not Married)

- 1) If the decedent (a.k.a. deceased person) is not survived by a spouse (e.g. not married) their entire estate will pass to their descendants (e.g. children, grandchildren, etc.) by representation.
- 2) If the decedent (a.k.a. deceased person) is not survived by a spouse or any descendants (e.g. children, great grandchildren, etc.) their entire estate will pass to their parents equally. In the event one of the decedent's parents is deceased, the entire estate passes to the surviving parent.
- 3) If the decedent (a.k.a. deceased person) is not survived by a spouse or any descendants or parents, then the entire estate will be split amongst the decedent's parents' descendants (e.g. the decedents brothers, sisters, nieces, nephews, etc.) by representation.
- 4) If the decedent (a.k.a. deceased person) is not survived by a spouse, any descendants, parents, or decedent's parents' descendants, then their estate will be divided equally between their paternal grandparents and maternal grandparents.
- 5) If the decedent (a.k.a. deceased person) is not survived by a spouse, any descendants, parents, the decedent's parents' descendants, or their paternal grandparents or maternal grandparents, then their estate will be divided between the descendants of their paternal grandparents and maternal grandparents.
- 6) In the event the decedent (a.k.a. deceased person) is not survived by a spouse, any descendants, parents, or descendants of their parents, or descendants of their paternal or maternal grandparents, then their estate will "escheat" or pass to the state.

Although there may be some limited exceptions to the distribution rules set forth above, they generally set forth the Arizona rules of intestate succession.

Taking Control and Avoiding Probate

If you are desirous of protection for your beneficiaries, especially in non-traditional relationships, **the best safeguard is to execute a pour-over will and trust since your failure to do so can negatively impact your beneficiaries.** Further, by not executing a trust, you family will be forced to deal with the court system in order to probate the estate.

If you are desirous of learning more about estate planning and how it can benefit you, please contact BURNS AND BURNS, P.C. to discuss your personalized issues and concerns.

About the Author Scott F. Burns, Esq.

Scott F. Burns, Esq. is an Arizona attorney whose clientele includes professional athletes, business owners, and families desirous of protecting their personal and professional legacies through the use of asset protection strategies, estate planning and business consulting.

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