

# Legal Update – Fall 2008 Newsletter

## **Who gets my property if I die without a will?**

It is a common misconception that the State of Ohio gets your property if you die without a will. In most cases, this is not true. The State of Ohio will receive your property only if you leave no surviving relatives.

If you die without a will, your property will be distributed according to Ohio's intestacy laws.

Ohio's intestacy laws identify who receives your estate, beginning with a surviving spouse, if there is one.

The amount your spouse will get depends on whether or not you leave children:

- (a) If you leave no children, your surviving spouse receives your entire estate;
- (b) If you leave one or more children, all of whom are also the children of your surviving spouse, your entire estate will pass to your spouse;
- (c) If your surviving spouse is the natural or adopted parent of at least one, but not all of your children, your spouse receives the first \$60,000, plus one-third of the remaining estate;
- (d) If you leave one child who is not the natural or adopted child of your surviving spouse, your surviving spouse receives the first \$20,000 plus half of the remaining estate;
- (e) If you leave more than one child and your spouse is not the natural or adopted parent of any of them, your surviving spouse will receive the first \$20,000, plus one-third of the remaining estate.

If you are unmarried, your estate passes to your children in equal shares.

If you have no children, your estate passes in the following order to:

- (a) Parents
- (b) Brothers/Sisters
- (c) Nieces/Nephews
- (d) Grandparents
- (e) Other next of kin such as aunts, uncles or cousins
- (f) Stepchildren
- (g) State of Ohio

Before your relatives receive any of your property, your estate must pass through probate. Probate is the court procedure that must be followed in order to distribute your probate property. Probate property is any property that does not pass directly to a named beneficiary upon death. "Non-probate" property includes property held joint with rights of survivorship or transfer on death property.

Non-probate property passes outside of the probate process because it is governed by the laws of contract. For example, if you purchase a life insurance policy you designate a beneficiary. When you purchase the policy, you are entering into a contract with the insurance company. As part of that contract, the life insurance company must pay the policy to your beneficiary following your death.

Probate property is not governed by contract law, and so must pass either by the terms of your will (if you leave one) or by Ohio's intestacy laws (if you do not leave a will). Probate property includes real property (land) and personal property (bank accounts, cars, jewelry, etc.).

During the probate process, the court will appoint an administrator to gather estate assets, pay debts, and distribute the estate. The court will appoint the surviving spouse as administrator. If the surviving spouse declines or there is no surviving spouse, a relative will be appointed.

Although it may be reassuring to know that the State of Ohio probably will not get your estate if you do not make a Will, it makes much better sense to create a Will. Ohio's intestacy laws only provide for relatives. Loved ones who are not related to you by blood, marriage, or adoption (such as friends and significant others to whom you are not married) will not receive any of your property.

Even if you want your property to pass to relatives, you should create a Will to designate the property that you want each relative to receive. You may want certain relatives to receive land or money, and others to get personal property that has sentimental value.

It is important to remember that your estate will consist of property that you worked over your entire lifetime to accumulate. Do not leave it up to the State of Ohio to determine who receives your hard-earned property. ■

### **Life Insurance Trusts Can Make Sense for Those in Second Marriages**

Estate planning can be difficult for remarried individuals. Many people in second marriages have children from a first marriage, and find it hard to meet the needs of both families in an estate plan. There are many estate planning tools available, however, that will provide for both a spouse and children.

A life insurance trust is commonly used in such a situation. In a life insurance trust, the grantor (the person who creates the trust) contributes money to the trust to purchase life insurance. The grantor appoints a trustee to purchase the life insurance, which is used to fund the trust. The trust owns the life insurance policies. Your spouse or children (or both) can be named beneficiaries of the trust, which can be drafted to address your unique situation.

As with any trust, a life insurance trust must be carefully drafted to minimize or avoid gift taxes. ■