

LIVING AND DYING WITHOUT AN ESTATE PLAN

Dying without an estate plan is a logical section for this booklet. You want to know to whom your property passes if you do not have a Will. What difference does it make if you live without an estate plan? After all, in the interest of efficiency, isn't an estate plan something you do only when you're going to die? Isn't the optimum of efficiency signing a Will the day before you die? In a perfect world, you would plan your estate so that you would spend the last dollar on the day of your death and leave a Will that says, "Being of sound mind, I spent it all."

LIVING WITHOUT AN ESTATE PLAN

Living without an estate plan has two disadvantages. First, in estates in which tax reduction is a factor, your Will is one of the least important estate planning documents from a tax savings standpoint. The bulk of the planning takes place outside of the Will. From a wealth transfer standpoint, estate planning is

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essential. Estate planning can save millions of dollars in taxes. In some circumstances, both in small taxable estates and in extremely large estates, planning can eliminate all estate taxes. Effective estate planning for wealth transfer purposes is best implemented over time. The planning which can be put in place beginning at age 50 is far different from the planning which can be instituted at age 90.

Equally important however, are the refinements made to your plan that only you can determine. I came to this

conclusion after meeting with many clients over the years on their estate plans. When I meet with clients to revise their plan after several years, they have come back to me with new ideas and objectives which they want reflected in their estate plan. They have considered what they want to have accomplished during their lives, the kind of person they want to be remembered as and the kind of people they want to help their children become. My clients have taught me that in estate planning, you consider the legacy you want to leave. Not just monetary. What do you want to give your children? Is it a million dollars? Is it self

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esteem? Do you want to give your children fish or teach them how to fish? I have a friend who has significant wealth, but the most valuable gift he has given his family and close friends is his time, advice and counsel in teaching them "to fish." Wealth and self esteem are clearly

not mutually exclusive. Wealth can be used to take advantage of opportunities, to educate, or to provide for the personal needs of your children. Wealth can be used to provide "extras" for your children at certain times in their life, such as when

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they have small children, to facilitate the purchase of a home, to start a business, or to provide a housekeeper in times of stress, etc. My clients have taught me that "thoughtless" money may not have the impact desired. Intentional giving can be invaluable. Intentional giving can be of anything - money, time, attitude. Small amounts of money given or used intentionally can have a ripple effect far greater than a large amount given thoughtlessly.

Formulating the legacy you want to leave your family is an essential part of an effective estate plan. After my clients have formulated their objectives in their estate plan, it has become a part of their life. In our discussions, they begin to tell me actions they have taken and things they have said to their children. They have made changes in the way they handle things, the things they do, the things they say and the money they give. These changes are subtle. Frequently, my clients are not aware of the changes until the next time we meet to review their plan. This process is enriching to the family, and frankly, to me. I have learned an enormous amount from my clients and have been enriched immeasurably by sharing the process and their insights.

DYING WITHOUT AN ESTATE PLAN

What does happen when you die without an estate plan, without a Will?

First, the state does decide in the sense that Texas has statutes that provide for the distribution of your property to your heirs. However, the state does not get your money unless you have no heirs. The state statutes are designed to give your money to those persons who you would normally want to receive your property. Frequently, state law does give the property to whom you would want but not in the way you would want.

The state distribution provisions depend on whether the property is separate or community and who survives you.

An in-depth description of separate and community property is discussed in the section of the guide book entitled "Character of Marital Property." Community property only exists during marriage and during the lifetime of both spouses. Community property is owned one-half by each spouse. The deceased spouse's one-half of the community property will pass under his Will, or if he/she has no Will, as Texas law provides. The surviving spouse retains her one-half of the community.

Spouse but No Children

Your spouse has the right to live in your home for her life despite whether the home is community or separate.

Community property. If you are married and have no children, all of your community property will pass to your spouse.

Your spouse has the right to live in your home for her life regardless of whether the home is community or separate.

Separate property. Your personal property (all property except real estate) will pass to your surviving spouse. One-half of your real estate will pass to your spouse and one-half to your heirs-at-law (see discussion below titled "No Children and No Spouse"). If you do not have any parents, brothers or sisters or any descendants of your brothers or sisters who survive you, then all of your real estate will pass to your spouse.

Spouse and Children

As stated above, your spouse has the right to live in your home for her lifetime no matter whether the home is community or separate property.

Community Property. Two possibilities:

If all of your children are also children of your spouse, all of your community passes to your spouse.

If one or more of your children are not children of your spouse, your one-half of the community property passes to your children.

Separate Property. One third of all of your personal property (all of your property except real estate) passes to your spouse and two-thirds to your children. Your spouse has a life estate (right to use property and/or receive income from the property) in one-third of your real estate, with the remainder passing to your children.

Children but No Spouse

If you do not have a spouse, you do not have any community property.

All of your property will pass to your children. If any of your children are deceased, that child's share will pass to his/her children. For example, let's assume you have three children, each of them has two children. If all of your children survived you, each would receive 1/3 of your estate. If one of them predeceased you, your two children who survived you would receive 1/3 each and

Your one-half of the community property passes to your children if one or more of your children are not children of your spouse.

the two children of your deceased child would each receive 1/6 of your estate. Distribution in which a child's share is divided among his children is referred to as *per stirpes*. *Per capita* would mean that all persons share equally - each child plus each child of a deceased child would receive 1/4 each.

No Children and No Spouse

If you have no children and no spouse, your property passes to your parents in equal shares. If either of your parents is deceased, his/her one-half will be distributed to your brothers and sisters equally. If any of your brothers and sisters are deceased, his/her share will be distributed to his/her children. If you have no parents nor any siblings or descendants of your siblings, then your property is distributed to your grandparents, then your aunts and uncles, then your cousins, then their descendants. None of them are living? Then to great grandparents, great aunts and uncles, then their descendants and so on - sort of like successive umbrellas.

If none of any of these people can be found - well, then it probably does go to the State of Texas.