Dying Without A Will

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Have you ever heard it said that if you die without a Will "everything goes to the state"? This may be a more widely believed conception than people realize. Fortunately, the statement is not totally correct. While it is possible that the Commonwealth of Pennsylvania can receive some/all of a decedent's assets, there is quite a long and rather involved procedure to follow before that would ever occur.

Assets owned by the decedent that contain named beneficiaries and other jointly-held assets, of course, will pass according to those specific designations. This information concerning assets controlled by Will pertains primarily to assets that are titled in the decedent's name along (or designated to pass to one's estate).

In the state of Pennsylvania there is a specific order of distribution to follow when a decedent dies intestate (without a Will). One should not assume however, that when a person dies without a Will everything automatically passes to his/her surviving spouse. If the married decedent has children, the children generally would share in the intestate distribution; also if there are no children but the decedent's parent(s) are surviving, the parents would share a portion of the distribution with the decedent's spouse. There are other categories to work through before making any distribution. Just to show the remoteness of the distribution candidates, the last category prior to the state receiving any distribution includes "uncles and aunts, and children and grandchildren of deceased uncles and aunts..."

When a person dies without a will and owns assets in his/her name alone, someone will have to be appointed (by the Register of Wills of the county in which the decedent lives) to administer the decedent's estate. Likely parties may file a petition to be appointed, but the Register will make the final decision as to who receives the position. The appointee is called an administrator.

The administrator's duties are very similar to those of an "executor", the title for the job if there had been a Will and the decedent had designated the person to handle his/her final affairs. The major difference occurs when the estate administration is complete and time for distribution has come. When there is a Will in place, the job is usually easier because the executor simply follows the decedent's wishes state in the Will and makes distribution to the appropriate parties.

Problems can arise in the case of no Will if the administrator is unable to confirm whether a member of any certain category is alive or dead. If, for example, members of a family have not seen a prospective heir for many, many years and to the best of their knowledge he/she last lived in another state, the administrator must perform a diligent search for the prospective heir and publicly advertise according to certain guidelines in the area where the heir was last known to have resided. In addition, if it cannot be determined whether the party is alive or dead, that party's share will be held by the state for a certain number of years giving the party even more time to claim his/her inheritance, after which monies will be turned over to (called "escheat to") the state.

Certainly there are greater advantages if a decedent's plan has been "engineered" in a Will which establishes clear and precise distribution instructions, however, the "state" does not automatically inherit when one dies without a Will.

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