

WHAT HAPPENS IF I DIE WITHOUT A WILL?

A common question we hear is “What happens if I die without a will?” If you die in Colorado without a will, Colorado law has directions for who receives your property and who administers your estate.¹

WHO WILL RECEIVE MY PROPERTY? Property passing under a will or under the laws of intestacy is referred to as “probate property,” whether or not probate is required. Probate property is property that you own in your name or with another owner as tenants in common (not joint tenancy), and without a named beneficiary. If you die with a valid will, your probate property passes according to the directions in your will. If you die without a will, your probate property passes according to state laws known as the laws of intestacy.

The determination of who receives your property under the laws of intestacy depends upon several factors, primarily whether you were married at your death, whether you have any living descendants, and whether you have any living step-children. Some examples are as follows:

- If you are married with children, and neither you nor your spouse have children from a prior relationship, your entire probate estate will pass to your spouse.
- If you are married with children, and you or your spouse have children from a prior relationship, your spouse receives a certain share of your probate estate and your descendants receive the balance.
- If you are not married, you can enter into a Designated Beneficiary Agreement, and the other party to the agreement can become your heir to receive all or a part of your probate estate under the laws of intestacy.
- If you are not married and do not have a Designated Beneficiary Agreement, and you have children, your probate estate will be distributed to your surviving children, with the descendants of any deceased child receiving a share.

WILL PROBATE BE REQUIRED? The determination of whether probate is required is not dependent on whether you have a will. Under current Colorado law, probate will be required if, at your death, you own probate assets with a total value of at least \$66,000 (under current Colorado law) or if you hold any real property in your own name and not in joint tenancy or with a beneficiary designation. In most cases, Colorado probate is advantageous to those you leave behind and is not necessarily a process that should be avoided.²

WHO WILL ADMINISTER MY ESTATE? If your estate is probated, a personal representative (executor) will be appointed by the court to administer your estate. If you leave a will, you can nominate a personal representative, and that person will have the first priority for appointment. If you die without a will, Colorado law sets out a list of persons with priority.

¹ This article only discusses Colorado laws. The laws of other states may be different.

² In many cases, attempts to avoid probate can result in more cost and complexity in administering your estate, and may result in your property not being distributed as you intend.

THE BENEFITS OF HAVING A WILL. By having a will, you can nominate a personal representative and direct who will receive your property. There are many options for how to leave your property under your will. For example, the following scenarios can be addressed:

- If you have children from a prior marriage, you can leave assets in trust for your spouse so that your spouse is provided for, but at your spouse's death the remaining assets of the trust are distributed as you direct (*i.e.* to your children).
- You can provide for children or other beneficiaries who have a disability and may be receiving Medicaid or other public assistance benefits by leaving assets in a supplemental needs trust (SNT) for them. The goal of the SNT is to provide for the beneficiary, without disqualifying the beneficiary for public assistance.
- Your will can incorporate planning to reduce or eliminate estate taxes.

Stover & Spitz LLC is pleased to provide a variety of estate planning services, including the preparation of wills, trusts, medical and general powers of attorney, and living wills. Stover & Spitz LLC can also assist with most facets of asset transfer after your death whether it be probate, trust administration or non-probate transfers.

If you wish to discuss our potential representation for estate planning or following a death, please call us at 303-682-0433 to set an appointment.