Florida Intestate Law: Dying Without a Will in Florida

May 31, 2011 By Jeramie Fortenberry

One of the most frequent questions I get from clients has to do with Florida intestate law. Clients want to know what happens when someone has died without a will.

Intestate succession can vary from state to state, but usually the decedent's assets will pass to his or her spouse and children in various proportions. Florida intestate laws are no different. The Florida Probate Code divides a deceased person's estate between his or her spouse and children. But the question of who gets what depends on the decedent's family situation.

If the Decedent Was Married and Had No Descendants

This is the easy one: If the deceased person was married but has no living descendants (children, grandchildren, etc.), the spouse gets everything.

If the Decedent Was Married and Had Living Descendants

If the deceased person was married and had living descendants, the spouse gets one-half of the estate and the descendants will share the balance of the estate equally. If all of the descendants are all the spouse's children (as opposed to being children from another marriage, for example), the spouse gets an additional $60,000 off the top, before the estate is divided.

For example, suppose that John dies leaving a surviving spouse (Mary) and two children (Jack and Jill). He had $300,000.00 in assets. If Jack and Jill are not Mary's children, Mary would get $150,000 in assets and Jack and Jill would get $75,000 each. But if Mary is the mother of Jack and Jill, she would get $180,000 ($60,000 off the top plus $120,000 as her half of the $240,000 balance) and Jack and Jill would each get $60,000.

Suppose that Jack is Mary's son but Jill is a child from a prior marriage. Does Mary get $60,000 off the top? No. In order for Mary to get the $60,000, Mary must be the mother of all of John's descendants. If even one of John's descendants is not also Mary's descendant, Mary's share is limited to one-half of the estate.

If the Decedent Was Unmarried and Had Living Descendants

If the decedent had no spouse but had living descendants, the descendants get everything on a *per stirpes* basis. This means that the estate is divided at each generation, with children of any deceased parent to take the share their parent would have taken.

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Suppose that John was unmarried at the time of his death. John had three sons, Curly, Larry, and Moe. Moe died before John, leaving two sons, Little Moe and Shemp. John's estate would be divided in equal thirds at the first generational level (his children). Curly and Larry would each get one third. Since Moe predeceased John, his one third would pass to Little Moe and Shemp in equal halves, giving them one-sixth each.

If the Decedent Was Unmarried and Had No Descendants

If the decedent was unmarried and had no descendants, his estate would pass to more remote family members in order of priority:

- First, his estate would pass to his father and mother equally. If only one of them survive the decedent, that parent would get everything.
- Second, if the decedent's father and mother are dead, his estate would pass to his brothers, sisters, and descendants of deceased brothers and sisters on a *per stirpes* basis.
- Third, if there is no surviving father, mother, siblings, or descendants of siblings, the estate is split equally between the decedent's mother's relatives and the decedent's father's relatives.
    - The grandmother and grandfather (or the survivor of them) on each side would have first rights.
    - If the grandmother and grandfather are deceased, the estate would go to uncles, aunts, and descendants of deceased uncles and aunts.
    - If there are no surviving relatives on the mother's side of the family, everything will go to the father's side of the family, and vice versa.

So there's the nuts and bolts of Florida intestate distribution. Check our article on Florida Intestacy and Intestate Succession for more information.

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