**WHAT….. NO WILL?**

**BY: WILLIAM G. MORRIS, ESQ.**

Not everyone prepares a Will or Trust to address who gets what when they die. Some die Willless. What happens then?

A person dying without a Will or Trust dies intestate (it means no Will). The person’s assets which do not pass automatically at death (i.e. payable on death account) must go through probate under the rules of intestate succession.

All states have statutes that set out who gets assets of a person who dies without a Will or Trust. Florida’s intestate statutes are found at Sections 732.101-111 Florida Statutes. Contrary to popular belief, those statutes do not provide that intestate assets automatically go to the State.

The legislature sets out a who gets what plan that the legislature thinks a typical Floridian would want if a Will was drafted. Let us take a look at what that is.

A surviving spouse gets everything unless one of the spouses has descendants who are not descendants of the other spouse. If the decedent has descendants who are not lineal descendants of the surviving spouse, the surviving spouse gets half and the lineal descendants who are not lineal descendants of the surviving spouse get the other half. If both spouses have lineal descendants who are not descendants of both spouses, the surviving spouse gets half, and the decedent’s lineal descendants get the other half.

That means a Will might be even more important in a second marriage, especially if someone wants their new spouse to get more than half.

Assets that do not go to the surviving spouse in an intestate estate pass to heirs of the decedent, in the following order:

1. The descendants of the decedent;
2. If there is no descendent, to the decedent’s father and mother equally or to the survivor;
3. If none of the foregoing, to the decedent’s brothers and sisters and descendants of deceased brothers and sisters;
4. If none of the foregoing, one half to the decedent’s paternal and one half to the decedent’s maternal kindred in the following order:
5. To the grandfather and grandmother equally or to the survivor;
6. If no grandfather or grandmother, to uncles and aunts and descendants of deceased uncles and aunts;
7. If no paternal kindred or maternal kindred, the estate goes to the other kindred who survive in the above order.
8. If no kindred of either part, all of the property goes to kindred of the last deceased spouse of the decedent as if the deceased spouse had survived the decedent and then died intestate entitled to the estate.
9. If none of the above can be found, the assets go to the State. The assets are sold, and the funds held for ten (10) years. If no one claims the funds during that time, the State keeps the funds.

A person without a Will rarely has any other estate planning documents. That means no health-care surrogate, which is a person selected to make medical decisions if one is incapacitated and cannot make decisions. Just as with failure to make a Will, Florida’s legislature has a plan for those who do not have a health-care surrogate.

Section 765.41 Florida Statutes provides a pecking order of people authorized by the statute to make medical decisions when the patient is unable to do so and the patient has not appointed a health care surrogate. A guardian appointed by a court is authorized to make medical decisions, but a guardian is not required. If there is no guardian, the statute provides that medical decisions can be made by individuals in the following order of priority:

1. The patient’s spouse;
2. An adult child of the patient or, if more than one child, a majority of the adult children who are reasonably available;
3. A parent of the patient;
4. The adult sibling or if more than one sibling a majority of the adult siblings who are reasonably available;
5. A close friend of the patient;
6. A clinical social worker licensed pursuant to chapter 491 or who is a graduate of a court-approved guardianship program. If this option is used the person must be selected by the medical provider’s bioethics committee or the bioethics committee of another provider.

These statutes are not a good substitute for proper planning. Many might be unhappy to find their assets going to the legislature’s choice under intestate succession. Medical decisions being made by those chosen by the legislature might wake the dead. And if a medical decision is to be made by a committee of children or siblings, a deadlock might preclude any decision at all. These problems can be avoided with properly drafted estate planning documents.

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