

Estate Planning in Pennsylvania – What if you do nothing?

*By John S. Morrow Jr., Esquire
Tax & Estate Administration Group, Julian Gray Associates
March 1, 2014*

Many of people just never get around to having a Will prepared, even if they think that it's a good idea to do so. And some of those same people even think that if they die intestate (without a Will), all of their assets are forfeited to the state upon death! Well, all of you procrastinators out there can rest assured that if you die without a Will, escheat to the government only occurs if you die unmarried and your closest relative is fairly remote. Otherwise, the law provides for your estate to pass in a way that makes fairly good sense, but may or may not be to your liking.

For one thing, spouses do not automatically inherit everything. Your surviving spouse's share depends upon who your other heirs are. Only if both of your parents are dead and you are not survived by issue (children, grandchildren, etc.) does your spouse inherit everything. If you are not survived by issue but a parent survives, your spouse gets the first \$30,000.00 in value plus one-half of the balance. If you are survived by issue, your spouse's share depends upon whether all of your issue are also your spouse's issue. If they all are, your spouse gets the first \$30,000.00 in value plus one-half of the balance. If they are not, your spouse gets one-half of your estate. Heirs of your deceased spouse (unless they are your heirs, too) are not heirs of your estate.

The portion of your estate not earmarked for a surviving spouse first passes to your children in equal shares and in representative shares to the issue of deceased children. If none of your lineal descendants are alive, it passes to your parents or the survivor of them. If neither is alive, it passes to in equal shares to your siblings and in representative shares to the issue of deceased siblings. If none of them survive you, it goes to your living grandparents if any of them are alive, and in representative shares down the lineal lines of those who are deceased. If you have no living grandparent, it passes in equal shares to your aunts and uncles and in representative shares to the children and grandchildren of deceased aunts and uncles. Only if none of the foregoing are available does your estate pass to the Commonwealth of Pennsylvania as a last resort.

If the foregoing results are satisfactory to you, you do not need a Will to determine who your heirs will be. However, without an executor appointed by Will, who will be in charge of making sure that your estate goes where it's supposed to go? The law also steps in here to decide for you. A surviving spouse has first priority of right to administer, but if there isn't one, the people getting the biggest shares have equal priority. That could be a lot of people, and appointing them all could lead to chaos, so they are going to have to decide amongst themselves (or fight it out in court) as to who will serve. And even if only one person gets the biggest share and first priority, you might prefer not to have that particular person in charge of settling your affairs.

Having a Will not only allows you to determine who will settle your estate, it also allows you to make that person's job easier by excusing him or her from having to post bond (and yes, it's the same process and agencies that people in jail have to go through to post bail bonds – not a

pleasant prospect). A Will also lets you decide whether or not your probate estate will pay the inheritance tax on assets (such as joint bank accounts) passing outside of your estate.

Also, you can easily see how quickly intestate estate shares multiply and become sub-divided as your heirs become more remote, but even if your heirs are close relatives, note how likely it is for a minor child to inherit a deceased parent's share of an estate. When minors inherit, they can't have anything until age eighteen, and then they get it all. Determining who is responsible in the meantime can involve costly and contested court proceedings, but with a properly drafted Will, you can appoint guardians or trustees over minors' inheritances and control when and under what circumstances a minor heir will receive distribution. Importantly, you can also control what they inherit. One of the main problems presented by representational share entitlement to an estate is that most people do not leave an estate consisting solely of money to be apportioned. Minors are permitted to own real estate in Pennsylvania, but they are not permitted to do anything with what they own, so you won't want them to be inheriting undivided interests in real estate. And even without minor heirs, chopping up real estate into representational shares can present huge problems due to owner non-cooperation that often never get resolved except by sale of the property for delinquent utilities, real estate taxes or inheritance taxes.

And here is one last thing for you to consider: nobody can be involuntarily compelled to administer your estate. So, while you may be free to do nothing at all in the way of estate planning, what if your estate is such a mess that nobody else is willing to do anything either?