

CALIFORNIA INTESTACY COMMON ISSUES INTESTATE ESTATES FACE

*Some of the Practical Concerns and Issues
that Arise When Someone Dies Intestate in California*



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In our second white paper on intestacy in California, we will take a little closer look at some of the common issues that intestate estates face. When people die without a will in California, intestacy laws govern what happens to their estate. Whether you die without a will, or have to deal with an intestate estate left behind by someone else, these laws predetermine what happens.

Because of this, people facing intestate estates have far fewer options than those who create an estate plan. Here are some of the practical concerns and issues that arise when someone dies intestate.

SPOUSAL INHERITANCES IN INTESTACY

One of the more complicated issues that arise in intestate estate in California occurs when a decedent dies leaving behind a surviving spouse and children or close relatives.

California is what is known as a community property state. This means

that the property owned by married couples is divided into two general categories: community and separate property. In order to determine what a surviving spouse inherits, you have to understand the distinction between these two forms of property.

The essential distinction between separate and community property is this; community property is property a married couple acquires during the course of their marriage, while separate property is property they owned prior to becoming



married and which they kept separate during the course of the marriage. However, property received as either an inheritance or a gift by a spouse is not considered community property just as long as the spouse who received it kept it separate during the marriage.

The difference between community and separate property is important because of the way the different types are divided as inheritances in intestate estate. When a spouse dies, the surviving spouse automatically receives the deceased spouse's share of the community property. In other words, the surviving spouse inherits all the property the couple acquired during the course of the marriage.

If there is any separate property owned by the deceased spouse, that property will then be distributed to the surviving spouse and, possibly, other close relatives.

For example, if a person dies leaving behind a spouse in California, the spouse will receive all of the community property, and will divide the separate property only if there is a surviving child, parent, or sibling of the deceased spouse. If there is a surviving child or children, the surviving spouse will receive either one-half or one-third of the separate property, while the children inherit the remainder. If there are no children but a surviving parent of the deceased spouse, the surviving spouse will inherit half of the separate property, with the remaining half going to the parent. The same is true in the event there are no surviving children or parents, but surviving siblings of the deceased spouse.

ESTATE ADMINISTRATION AND INTESTACY

One of the problems that arise with intestate estate is the practical reality of having to deal with the property left behind by the decedent. Whether it's



personal property, real estate, investments, or anything else, someone has to step in to take over managing the property. Because the former owner did not create a last will and testament that nominated a person to do this, it will fall to a California probate court

to appoint an estate administrator, also known as a personal representative.

In most situations the court will appoint a close family member to serve as personal representative. However, not all close family members might be able to serve. California probate law sets out specific qualifications that someone must meet in order to serve as a personal representative. If no close family members meet these qualifications, or no family member is willing to serve, the court will have to choose someone else.

In other words, a person who dies intestate has no control over who the personal representative will be. Failing to have a last will and testament, or failing to create an estate plan, effectively cedes your right to make a decision about who will manage your estate.

ESTATES AND ESTATE BILLS

Another common concern that arises out of intestate estates is the issue of what happens to bills and other debts left behind by the decedent. A lot of people become concerned that they might somehow become responsible for having to pay back any unpaid bills. Though this normally isn't the case, it is possible for family members to have to pay for debts left behind in rare situations.

In the vast majority of situations, any debts left behind by a deceased person will have to be paid back through the estate. After a person dies and the court appoints an administrator, the administrator will have to determine



what the decedent owned. He or she will also have to allow creditors to file claims if those creditors believe the decedent owed them money. After reviewing the claims, the administrator will then determine the order in which the debts are repaid, and will use estate assets to repay them.

The only time a family member will be responsible for paying back estate debts is when that family member was a joint debt holder with the decedent. For example, if you signed as a cosigner on your mother's mortgage, you will still be responsible for paying the mortgage after your mother's death. This is true even if you never lived in the home, or if your mother had made all prior mortgage payments.

AVOIDING INTESTACY

If there is a single lesson to take away from our two-part discussion on intestacy laws in California, it's this; you have the power to avoid intestacy by taking some simple steps. If you create even the most basic of estate plans, you can make inheritance choices, choose your personal representative, and avoid the potential headaches that often come with intestate estates.

Of course, to create a comprehensive plan, you should schedule an appointment to come talk to us as soon as possible so we can give you the advice you need to make wise decisions.

About the Author



Timothy P Murphy

Timothy P. Murphy is an estate planning and elder law attorney whose practice emphasizes helping people to build, preserve and pass on their wealth. He works with his clients to accomplish their goals while avoiding unnecessary court proceedings and minimizing or eliminating exposure to death taxes. Mr. Murphy also assists families facing the myriad of problems associated with dealing with a loved one's declining health and rising needs for care. He has practiced law in the Sacramento area for 29 years, first with a large firm, and then with his own firm since 1987.

Tim has written a regular column on legal issues for Senior Magazine. He also was a regular featured guest on the Money Experts radio program heard locally on KFBK (AM 1530). Tim has been featured in the Sacramento Bee, Sacramento Business Journal, Sacramento Magazine, Comstock's Magazine and other publications on estate planning and related topics. He also assisted local Channel 3 (KCRA) in an investigative report on the trust mill problem in the Sacramento area and was featured on Channel 10 (KXTV) in its series on personal financial planning.

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