

## **Estate Planning 101**

By Attorney Marlene S. Cooper

### **“THE LAW OF RELATIVES”**

The State of California has laws that determine what happens to your worldly goods if you pass away without having made plans for their distribution. The important factor in determining who inherits the property is the legal relationship between the deceased person and his or her survivors. If the deceased person was married and leaves behind a surviving spouse, the surviving spouse will inherit all of the community property. If the deceased person had non-community property (“separate” property), that property will be divided between the surviving spouse and the deceased person’s children or other legal heirs.

In general, where there is no estate plan the following persons are entitled to an equal share in the estate of an unmarried, divorced, or widowed person in the following order: first, the children will divide the estate equally. If there are no children, the grandchildren will share the entire estate; if no grandchildren, then, great-grandchildren (if one is blessed to live that long!). If there are no children, grandchildren or great-grandchildren (“lineal descendents”), then the deceased person’s parents receive the entire estate. If the parents have already passed away, then the deceased person’s brothers and sisters (“siblings”) share the entire estate. If there are no surviving siblings, the children of the siblings (nieces and nephews) and their lineal descendants share the entire estate. For those deceased persons without children, parents, siblings, nieces or nephews, the law further defines the line of inheritance to the next of kin, which may be grandparents, great aunts and uncles, second cousins, etc.

A child of a deceased person gets the portion that would otherwise go to his or her deceased parent. Let's say, for example, that a divorced woman has three children but one child, Jenny, dies before she does ("predeceases" her). If Jenny did not have any children, Jenny's share would be split in half between her siblings. However, if Jenny left three children of her own, Jenny's siblings will each receive their one-third share of the mother's estate and Jenny's three children will split Jenny's one-third share.

Another factor which goes into a determination of who may inherit involves an inquiry into the parent-child relationship. Generally, a parent-child relationship exists between a person and his or her biological parents regardless of the marital status of the parents. Thus, once paternity is established for a child born out of wedlock, that child is entitled to inherit from his or her deceased parent and is given the same status as his or her half-siblings. This means, for example, that if your father had children "on the side", they could be considered part of his family for inheritance purposes!

Each case will depend upon its own facts and the general rules stated above may not apply to a given situation. This is an area where an opinion from an attorney (or the court) may be necessary to make a final determination as to whether a person has inheritance rights. Why leave it to chance? Through proper estate planning, you will ensure that only those you want to receive your property will get it. © 2010 by Marlene S. Cooper. All rights reserved. *(Marlene S. Cooper, an attorney for over 30 years, has a practice focused entirely on estate planning and probate. You may obtain further information on estate planning and probate at [www.marlenecooperlaw.com](http://www.marlenecooperlaw.com). You may also contact Attorney Cooper toll-free at (866) 702-7600, or by e-mail at [MarleneCooperLaw@aol.com](mailto:MarleneCooperLaw@aol.com). The information in this article is of a general nature and not intended*

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