

CALIFORNIA'S PLAN FOR DISTRIBUTION OF YOUR PROPERTY

If you pass away without having made plans for the distribution of your worldly goods, the State of California will use its plan. These laws, called the laws of “intestate succession”, determine who your heirs are if you die without a will, trust, or other estate plan. They are based on presumptions as to how the majority of people would want their property divided if they had taken the time to plan the distribution themselves. In many cases the result is what the deceased person would have wanted anyway but this is not always the case.

The laws of intestate succession are complicated. If you are married everything you own will be treated as either community property or separate property. As a practical matter, most property acquired through wages or earnings during the marriage is community property. Property acquired by gift or inheritance is generally separate property so long as it is kept separate from the community property. As a general rule, a married person can give his or her one-half of the community property and all of his or her separate property to whomever he or she chooses upon death by proper estate planning.

Under the state's plan, if a married person passes away with no estate plan and leaves a surviving spouse, the surviving spouse is entitled to all of the deceased spouse's *community* property. Even if the couple had been living separate and apart for several years or filed for divorce but never completed it, the surviving spouse is entitled to the property. Unless there was a formal property settlement agreement or legal separation, the law presumes that a married person would want his or her surviving spouse to have the community property. There is no inquiry into the actual facts of the matter.

If a married person passes away with no estate plan there are complicated rules that determine who the separate property goes to. In all cases, the surviving spouse will be entitled to “something” and the separate property is generally divided as follows: One-half to the surviving spouse and, if one child, one-half to the child; one-third to the surviving spouse and, if more than one child, two-thirds to the children.

If the deceased person left a spouse but no children, then the following persons are entitled to share in the estate in the following order of preference: grandchildren (or great-grandchildren), parents, brothers and sisters, nieces and nephews. Children of deceased persons get the portion that would otherwise go to their deceased parent. The same order of preference applies to single persons who pass away without children.

People do not have to be at the mercy of the State's plan of distribution. Through the mechanism of a living trust, a married person can designate who is entitled to receive his or her property. It is even possible for a person to give his or her spouse the rights to use the property for his/her lifetime and then give the property to someone else upon the surviving spouse's death, a common practice where second marriages are involved. To quote an advertising slogan, “have it your way !”