

ADMINISTRATION OF AN INTESTATE ESTATE

WHAT HAPPENS TO MY PROPERTY IF I DO NOT WRITE A WILL?

If someone dies without writing a will, they have died "intestate." Each state has specific laws governing the distribution of property when a person dies intestate, and most laws are generally the same. The laws of Alabama are discussed below, but you should remember that these laws may not apply if the deceased was not a resident of Alabama, or if the property is located in another state. In this list, "issue" means all of the people who have descended from the decedent. This includes children (both natural and adopted), grandchildren (both natural and adopted), great grandchildren, and so on.

PROPERTY GOING TO THE SURVIVING SPOUSE:

- a. entire estate if no surviving issue or parents of decedent;
- b. first \$100,000, plus 1/2 of balance of estate if there is no surviving issue but there is surviving parent(s)
- c. first \$50,000, plus 1/2 of balance of estate if there are surviving issue all of whom are also issue of surviving spouse; or
- d. 1/2 of estate if there are surviving issue who are not issue of the surviving spouse

PROPERTY NOT GOING TO SURVIVING SPOUSE:

If there is no surviving spouse, or there is property left after the spouse receives his or her share, it passes under the following priority: All of the property passes to the issue, unless there are none. If none, all passes to the parents. If neither parent is living, the estate passes to siblings, and so on under this priority:

- a. issue
- b. parents
- c. brothers and sisters
- d. grandparents
- e. aunts and uncles
- f. cousins

STEPS IN PROBATE OF AN ESTATE:

1. Petition filed
2. Take immediate control of the estate
3. Inventory of the estate within 45 days
4. Bond, equal to the aggregate capital value of the personal property of the estate, plus one year's estimated income from the estate
5. Notice (as may be required)
6. Letters of Administration granted
7. Notice to file claims must be published once a week for 3 weeks and individual notice given to anyone known to have a claim against the deceased
8. Claims must be filed generally within 6 months
9. Generally the estate cannot be divided until all claims and expenses have been paid which is at least six months
10. Probate Court must approve personal representative's fees (unless all interested persons agree and consent)

WHAT ARE THE POWERS AND DUTIES OF A PERSONAL REPRESENTATIVE?

1. Without court authorization the personal representative may:
 - a. retain assets
 - b. receive assets
 - c. perform deceased contracts
 - d. satisfy written charitable pledges
 - e. deposit funds in financial institutions
 - f. abandon valueless personal property

- g. allocate expenses to income
- h. pay assessments
- i. hold securities
- j. insure assets
- k. borrow to protect estate
- l. settle with debtors
- m. settle claims
- n. pay taxes and expenses
- o. sell or exercise stock options
- p. enter leases up to one year
- q. vote stocks
- r. employ and pay attorneys, auditors
- s. prosecute or defend claims
- t. continue unincorporated business
- u. incorporate the business
- v. limit liability

(Probate Court may limit powers of personal representative)

- 2. With prior court authorization the personal representative may:
 - a. abandon an estate asset
 - b. make repairs or demolish improvements
 - c. subdivide, dedicate land
 - d. leases greater than one year
 - e. enter mineral leases
 - f. sell real estate

CAN AN INTERESTED PERSON OBJECT TO COMPENSATION PAID TO THE PERSONAL REPRESENTATIVE, ATTORNEYS, ACCOUNTANTS AND OTHER PROFESSIONALS?

Yes, by filing an objection with the Probate Court, which will prompt a hearing to be held to determine the appropriate fee and / or commissions requested and the reasonable amount of compensation to be paid.

THIS INFORMATION PAGE, WHICH IS BASED ON ALABAMA LAW, IS TO INFORM AND NOT TO ADVISE. NO PERSON SHOULD EVER APPLY OR INTERPRET ANY LAW WITHOUT THE AID OF A LAWYER WHO ANALYZES THE FACTS, BECAUSE THE FACTS MAY CHANGE THE APPLICATION OF THE LAW.