

# Intro to Wills and Estates

And Intestacy

# Basic Language

- Devise – to give to someone in a will
- Heir – person that inherits (a living person has no heir)
- Descendent – deriving from an ancestor (usually blood relative, think kids, grandkids, etc)
- UPC – Uniform Probate Code

# Intestate Succession

What is it?

When a person dies without having a valid will in place, his or her property passes by what is called "**intestate succession**" to heirs according to state law. In other words, if you don't have a will, the state will make one for you. All fifty states have laws (or "statutes") of this kind on the books.

# Marital Property

Most states have an elective share where the surviving spouse takes all the decedent's one half interest in community or jointly owned property.

- Separate Property

1. Usually one third to surviving spouse and two thirds to children.

2. Stepkids take nothing unless formally adopted

3. If no surviving issue, spouse takes three fourths and one fourth goes to surviving parents or siblings.

# Issue and Blood Descendants

There are two ways to determine shares grandchildren will take if their parent dies before the decedent (the grandparent):

## 1) Per Stirpes

a) Property divided equally at the decedent's children's level. For children who predecease the decedent, their issue (grandchildren) all share equally the amount their parent would have taken had they survived.

## 2) Per Capita

a) By total headcount where property is divided equally among the first generation when at least one member survives the decedent which shares of each member of that generation who does not survive passing to the issue of the non-living member.

*Ex. T has 3 kids: A, B, C – A has no kids, B has D, and C has E & F. C dies before T. At T's death:*

Per Stirpes:  $B = 1/3$ ,  $A = 1/3$ ,  $E \& F$  get  $1/6$  (split what C would have gotten).

Per Capita: A, B, C, D, E, F get  $1/5$  (descendants take equally)

# Uniform Probate Code

1. T dies, spouse gets everything.
2. If T has a surviving parent, spouse gets \$300k + 75% of remainder of estate.
3. If there are children of both T and spouse, spouse gets \$225k + 50% of the remainder of estate.
4. If T has children not belonging to spouse, spouse gets \$150k plus 50% of the remainder of estate.