

Death and Taxes

News and Notes on Estate Planning, Probate and Residential Real Estate Topics
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Estate Planning/Probate

WHAT HAPPENS IF I DIE (WITHOUT A WILL)?

I recently made a series of estate planning presentations to employees of the U.S. Customs Service. In talking with the attendees afterwards, I learned that many of them were unaware of the need for a Will, and hadn't realized what would happen to their property if they died without one. As a result, I thought that information about dying without a Will might be of interest generally, and have therefore attached below a rough transcript of the portion of my presentation dealing with this issue.

Dying "intestate" means dying without a valid Will. You didn't make a Will before you died, or your Will doesn't meet the requirements of Illinois law, so it can't be used. That's intestacy. What's the practical effect of dying intestate?

You've probably all seen the cop shows where a perp is arrested, and is read his rights. The police officer will say something like, "If you do not have an attorney, one will be provided for you." In a sense, the same thing is true of dying intestate. If you don't have a Will, one will be provided for you. The problem is that your Will has, in essence, been drafted by a bunch of politicians in Springfield and by a judge or two, who have decided what you probably would've wanted to do if you had made a Will.

A Will essentially accomplishes three things: it allows you to give away your probate property (property that you own in your own name); it allows you to nominate an executor to wrap up your affairs; and, finally, it allows you to nominate a guardian for your minor children. Obviously, if you don't have a Will, these things need to be accomplished in different ways.

If you die intestate, your probate property will be distributed pursuant to Illinois intestacy law, and will pass to your heirs (closest relatives). Who are your closest relatives? That depends on your family situation, and the intestacy law covers pretty much every possibility. For the typical nuclear family (husband and wife plus kids), upon the death of the first spouse, half of his or her probate property will pass to the surviving spouse, and half will pass to the kids. In this situation, as in many others, what the intestacy law requires may not be what you would've wanted.

I think that most married people would want their surviving spouse to receive all of their property when they die, so that the surviving spouse can live comfortably and can support the children. That's not what Illinois law says, though, so you can have a situation where your children inherit a significant amount of your property, even if they aren't at an age where that's appropriate, and even if the receipt of this property creates significant estate tax problems. (Simply put, property passing to a husband or wife usually isn't subject to estate tax, while property passing to anyone else – including children – may be subject to the tax.)

Similar problems exist for unmarried people. Let's say that you're single, with no children, and your parents have already died. You're survived by two siblings: one is your best friend, and one you hardly know. Under Illinois intestacy law, your siblings would split your probate property equally – again, probably not the result you would've wanted.

Intestacy also affects the role of executor. Because you haven't named anyone to carry out the terms of your Will, someone – probably a spouse, parent or siblings – will need to petition the court to become administrator of your estate. This person will pay your bills and debts, and then distribute your property pursuant to the Illinois intestacy law I just mentioned. Needless to say, the person who petitions to become administrator may not be the person you would've chosen. But the court doesn't have the inside knowledge that you have – the judge won't know that your brother, who's seeking to become administrator of your estate, can't balance his checkbook. Furthermore, your administrator will be required to purchase an insurance policy (called a surety bond), paid for out of your estate, to ensure that he or she doesn't run off with the estate's property. A well-drafted Will can eliminate the need for a surety bond.

Guardianship is a final concern, and the problems here are similar to those just mentioned with respect to an executor. The court doesn't know who would make the best guardian for your minor children, and the judge will probably choose a close relative to carry out this role if you die without a Will. Again, this person may not be the person you would've chosen. *For more information regarding Wills and intestacy, please consult a qualified estate planning/probate attorney.*

Real Estate

MORTGAGE-RELATED PROGRAMS: “RIGHT-ON” OR RIP-OFF?

Having a mortgage can be a good thing, especially in this era of low interest rates, but it does increase the amount of mail in my mailbox. Some of this mail even comes from my lender, trying to woo me with programs related to my mortgage. The question, of course, is whether these programs will help me, or merely help my lender's bottom line.

1. **Mortgage Insurance.** I recently received an offer from my lender to participate in a “mortgage accidental death insurance program.” According to my lender, “[t]his insurance will pay for your family's home, up to \$200,000 if you die of a covered accidental injury.” To enroll in this program, I would only need to pay a monthly premium of \$25.44 (no physical or health information needs to be submitted).

Is this program a good deal? I was immediately suspicious, because of the limitation placed on payment – my mortgage balance would be paid off only if I die as a result of a “covered accident.” (Death which results from “bodily or mental infirmity, illness or disease” is not covered by this program.) I decided to take a closer look at cause of death statistics at the website for the Centers for Disease Control and Prevention (www.cdc.gov/ncipc/wisqars/), to see how accidents (aka “unintentional injuries”) rank as a cause of death. There, I discovered the following information (which is for the year 2000):

<u>Age Group</u>	<u>Unintentional Injuries, As Percentage of Deaths in Age Group</u>
25-34 years old	29.1%
35-44 years old	17.2%
45-54 years old	7.7%
55-64 years old	3.1%
65+ years old	1.7%

I also took a look at my own chances of dying at my current age (32), and found that the probabilities are very small; I once again consulted the CDC’s figures for the year 2000, and found (at www.cdc.gov/nchs/data/lt2000.pdf) that the probability of me dying this year is about 1/10th of 1% (huzzah!). This means that there is only about a 3 in 10,000 chance that the above insurance would be needed by me at any time in the near future.

Perhaps more to the point, I can’t see how the above insurance would benefit anyone, at least in terms of cost-effectiveness. For people in their 30s and 40s who are concerned about how their mortgage will be paid off after their death, more comprehensive fixed-term life insurance may be the best way to proceed. For my own situation, I found that I could actually obtain a \$200,000 30-year fixed-term policy (which would cover far more than just death caused by “accident”) for **less** than \$25.44 per month. While the monthly premium for a fixed-term policy on an older individual would obviously be higher than this amount, the risk of death by accident may simply be too small to recommend the “mortgage accidental death insurance program” even for these individuals.

2. Biweekly Mortgage Payment Program. I also recently received a notice from my lender offering to help me reduce the interest paid and term of my mortgage. How would it work? Well, instead of making my regular monthly payment twelve times every year, I would authorize my lender to debit my bank account for one-half of my regular monthly payment every two weeks. As an example, let’s assume that I pay \$1,000 per month for my mortgage. Under the “biweekly mortgage payment program,” I would pay \$500 every two weeks for my mortgage. This results in my making the equivalent of one extra mortgage payment per year (because I am making 26 payments of \$500 as opposed to 12 payments of \$1,000). To continue this example, let’s say that my \$1,000 monthly payment is required because I have a 30-year fixed-rate mortgage of \$185,000 at a rate of 5.00%. If I use the above program, I will save about \$33,000 in interest and knock about 5 years off the term of my mortgage.

There is no question that making mortgage payments early can save you a lot of money on interest charges (although this savings might be less than you’d think, since the interest charges are deductible for income tax purposes). However, there is a “catch” to this program, which appears at the very bottom of the notice I received: “There is a one-time

Start-up Charge of \$379. This nonrefundable charge may be paid by check, MasterCard or VISA.” The problem here, from a consumer’s perspective, is that you really are paying “money for nothing” – my lender is essentially asking me to pay \$379 so that it can do something for me that I could easily do for myself. (In fact you could argue that my lender is asking me to pay for something that is really to its own benefit, since automatic debit payments reduce my lender’s costs.)

The fact is that, using mortgage calculators (such as those found at www.bankrate.com), you can easily figure out the best way in which to save on interest charges and reduce the term of your mortgage. For instance, if I decide that I would like to save about \$33,000 in interest and knock about 5 years off my mortgage, I can sign up for this program OR I can...

- make one additional mortgage payment in January of each year;
- pay an additional \$100 with each monthly mortgage payment I make; or
- simply mimic this program by making one-half of a monthly payment every two weeks, either by writing checks myself or by establishing an automatic bill payment program through my bank or some other entity (such as Yahoo). You should be able to set up automatic bill-paying of **all** your bills – which can save a fair amount of time and postage – for around \$5.00 per month.

Another advantage to the “do it yourself” approach is that I don’t have to worry if I switch lenders (remember that the \$379 charge is nonrefundable, so I’ll lose that amount if I decide to refinance). *For more information regarding mortgages and/or mortgage-related offers, please consult a qualified real estate attorney.*

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