



*Legal Hotline for Michigan Seniors
3815 W. St. Joseph, Suite C-200
Lansing, MI 48917
Ph: 517.372.5959
Fax: 517.372.0792
In state HOTLINE: 800.347.5297
A program of Elder Law of Michigan, Inc*

WHAT IF I DO NOT HAVE A WILL?

Michigan law sets up rules for distribution of your property if you die without a valid will. These rules are called "intestate succession". The process of overseeing the distribution of your property is administered through the probate court (generally called probate).

SOMETIMES PROBATE IS NOT REQUIRED

Some kinds of property are distributed after your death with no reference to a will or intestate succession because probate is not required. Some examples follow.

Life Insurance and Other Assets with a Designated Death Beneficiary

If you have a life insurance policy, IRA, pension, etc. that names someone as your death beneficiary, they will automatically be entitled to the asset after your death. Some bank accounts can also be held as payable on death (P.O.D.) or in trust so that they are paid to a named beneficiary at your death.

Joint Property

Real estate can be owned by two or more people in joint tenancy or joint tenancy with full rights of survivorship. This means that when one joint owner dies the surviving owner will take full title automatically without the need for probate. The title transfer is shown simply by filing a certified copy of the death certificate with the register of deeds. Property held as husband and wife (called tenants by the entirety) also passes automatically to the surviving spouse. Some co-ownership of real

estate does not include this survivorship feature so you should have your deed drafted or reviewed by an attorney to be sure probate will not be necessary.

Savings and checking accounts, certificates of deposit, stocks and many other assets can also be owned as joint tenants with survivorship.

While holding title in joint ownership can avoid probate, it has risks for you: loss of control; possible transfers by the joint owner or claims of his/her creditors or divorcing spouse; and possible adverse tax consequences. **You should carefully consider the advantages and disadvantages and discuss your situation with an attorney before making any decision to add joint owners to the title of your assets.**

Trusts

Some people set up trusts to hold title to their assets. Since these assets will not be titled in the deceased individual's name, probate is not required. Trusts are complicated documents that should be drafted by an attorney.

INTESTATE SUCCESSION

The rest of this pamphlet outlines the basic provisions of Michigan's intestate succession law. These rules apply to the estates of individuals who died on April 1, 2000 or later. The law in Michigan changed on that date. If you want a different distribution of your property from what follows, you will need a will.

The way your property is distributed under intestate succession depends on which of your relatives survive you and how large your estate is. The law calls your children, grandchildren, great grandchildren, etc. (by birth or adoption) your "descendants". Your descendants' portion of your estate is distributed by "representation". This means the descendants' portion is divided into shares equal to the number of your living

children and your deceased children who left their own living children. Your surviving children each take one share. The other shares are divided equally among your grandchildren whose parents are deceased. Grandchildren whose parent survived you do not take anything. If all your children die before you, the descendants' portion of your estate is divided equally among all your surviving grandchildren.

If You Die Leaving a Surviving Spouse

In addition to his/her intestate share your spouse is entitled to certain allowances and exemptions of approximately \$57,000*. This amount is taken before the intestate share described below.

If you have no surviving parents or descendants your spouse takes your entire estate.

If you have surviving parent(s) but no descendants, your spouse takes the first \$201,000 plus $\frac{3}{4}$ of anything over \$201,000.* Your parents share equally in $\frac{1}{4}$ of any amount over the first \$201,000. For example: Joe dies leaving an estate worth \$241,000 and is survived by his wife Mary and his father. Mary gets \$231,000 (\$201,000 plus $\frac{3}{4}$ of the remaining \$40,000). Father gets \$10,000.

If you have surviving descendants, any of whom are also the descendants of your spouse, your spouse takes the first \$201,000* plus $\frac{1}{2}$ of anything over \$201,000. Your descendants take $\frac{1}{2}$ of anything over the first \$201,000 by representation. For example, Joe dies leaving an estate worth \$241,000 and is survived by his wife Mary and their daughter Ann and a son from a prior marriage, Paul. Mary gets \$221,000 (\$201,000 plus $\frac{1}{2}$ of the remaining \$40,000). Ann and Paul each get \$10,000.

If you have surviving descendants none of whom are descendants of your spouse, your spouse takes the first \$134,000* plus $\frac{1}{2}$ of anything over \$134,000. Your descendants take $\frac{1}{2}$ of anything over the first \$134,000 by representation. For example, Joe dies leaving an estate worth \$224,000 and is survived by his wife Mary and two children from a prior marriage,

Ann and Paul. Mary gets \$179,000 (\$134,000 plus $\frac{1}{2}$ of the remaining \$90,000). Ann and Paul each get \$22,500.

*These amounts are for 2010. They will be adjusted for inflation in future years.

If You Die Without a Surviving Spouse

If you have surviving descendants they take your entire estate by representation. For example, a single woman, Sue, dies leaving an estate worth \$60,000. Sue had four children: Ann, Paul, Ted and Jane. Sue has three grandchildren, two from Ann and one from Paul. If all her children survive Sue they each get \$15,000. If Ann and Paul die before Sue, Ted and Jane each get \$15,000 and Ann and Paul's children each get \$10,000 (an equal division of the combined shares of Ann and Paul).

If you have surviving parents but no surviving descendants, your parents take your entire estate in equal shares.

If you have no surviving parents or descendants your brothers and sisters take your entire estate in equal shares. Children of deceased brothers or sisters (your nieces and nephews) take by representation.

If you have no surviving parents, descendants, brothers and sisters, or nieces and nephews your estate goes to your grandparents or if they are deceased to descendants of your grandparents ($\frac{1}{2}$ to paternal side and $\frac{1}{2}$ to maternal side). For example, Betty dies leaving an estate worth \$60,000 and her only relatives are Bill and Pat, the children of her grandmother (Betty's aunt and uncle). Bill and Pat each get \$30,000.

If you die leaving none of the relatives discussed above your entire estate goes to the state of Michigan.

It is intended that the examples given here will be helpful in understanding Michigan intestate succession law. It may be complicated to determine an heir's share of an estate and if you

are involved in a situation with any of these issues you should consult with a lawyer.

*If you are a senior, you can get specific questions answered at the Legal Hotline for Michigan Seniors. Call **1-800-347-5297** (**372-5959** for the Lansing area).*

The Legal Hotline is a program of Elder Law of Michigan, INC., a non-profit organization. If you would like to support our work, please consider sending a tax deductible donation to the Legal Hotline, 3815 W. St. Joseph, Suite C-200, Lansing, MI 48917. Thank you.