

PLAN AHEAD: Don't Die Without a Will – A Case Study

Dying without a will, also known as dying intestate, can have tremendous financial and emotional consequences on surviving family members. In fact, having a will is so crucial as the following case illustrates.

My client, John, came to me shortly after his brother, Bob, died. John and Bob were the only siblings in the family. Their mother was deceased, but their father, Ted, was alive at the time of Bob's death. Ted was living with his common-law wife of twenty years, Joan, whom John and Bob despised and had no relationship with. Both John and Bob were not married and neither had children. When Bob died, he left no will. His estate consisted of a house valued at \$170,000.00 with no mortgage. Unfortunately, two days after Bob died, Ted died leaving his estate under a will to his common-law wife, Joan. When John came to me to probate Bob's estate, he was under the belief that as the only surviving blood-relative, he would be the sole beneficiary to his brother's estate. When John told me the situation, I told him that his belief was incorrect.

Under the Succession Law Reform Act, when a person dies without a will, the succession of property is to spouse, children, parents, siblings, in that order. John felt that as Bob had no spouse or children and both parents were deceased, that as the only surviving sibling, he stood to inherit Bob's entire estate. I told John that the law did not provide for this outcome. Because Ted, his father, had been alive for two days following Bob's death, he was, by law, the rightful beneficiary to Bob's estate. It did not matter to the law that Ted was deceased when John came to me to probate the estate. As long as Ted was alive at the time of Bob's death, Ted or his estate stood to inherit before John because parents inherit before siblings when one dies without a will.

But it didn't end there. Under Ted's will, the common-law wife, Joan, inherited his estate. As Bob's estate was now, by law, part of Ted's estate, Joan also was the sole beneficiary of Bob's estate. When I told John that Joan stood to inherit his brother's estate, he went ballistic. John was incensed that he did not stand to inherit his brother's estate. Moreover, John couldn't believe that the law allowed his father's common-law wife, a woman whom he and his brother had no relationship with and whom they despised, had a free windfall of \$170,000.00. The situation looked bleak. I found no legal decision to support my client's position that the father's estate should not inherit the brother's estate. If, as a beneficiary in an intestate situation, you are alive at the time of the deceased's death, and die afterwards, the estate of the deceased who die afterwards and their subsequent beneficiaries inherit. The law was not in favour of my client. My client had no hope of inheriting his brother's estate. Fortunately, we skillfully negotiated a settlement with Joan and her lawyer and my client ended up getting Bob's estate.

Nevertheless, this situation illustrates the tremendous importance of having a will. If Bob would have had a will appointing his only brother, John, as the beneficiary to his estate, neither his father, nor his father's estate nor any beneficiary under his father's will would have inherited Bob's estate. My client, John, would have inherited his brother's estate without any grief. With a will, you control who inherits your wealth, especially wealth

accumulated over a lifetime of hard work. Without a will, the law imposes beneficiaries upon your estate. As my client's case illustrates, dying without a will can have devastating consequences. The lesson is clear. Everyone must have a will.

If you have any questions regarding your estate and its management, Rutman and Rutman Professional Corporation will be happy to assist you. Or if you wish to have your will prepared, contact Gary D. Indech of Rutman & Rutman at 905-456-9969 or send him an email at gary@rutmanlaw.com.