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Writing a will



colorado state university extension service

alice mills morrow^{1/}

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Quick Facts

When there is no will:

- Property is distributed according to Colorado law. It can be inherited only by the spouse and by blood relatives.
- The probate court appoints an administrator.
- The probate court appoints a guardian for minor children.

When there is a will:

- Property is distributed according to the individual's wishes.
- Individual can accomplish charitable acts.
- He can name an executor of his choice.
- Individual can choose a guardian for minor children.

Everyone has the privilege of writing a will. Almost everyone intends to make a will before his death, but about half the population dies without doing so.

If an individual has no will, Colorado law determines how his estate will be distributed, who will be the guardian for minor children and who will be the administrator for the estate.

Distribution of an Estate by Law

Figure 1 indicates how an estate is distributed under Colorado law.

When property is distributed by law, the survivors may experience the trouble and inconvenience, additional legal fees and the long period of time necessary for court proceedings. Furthermore, the laws are inflexible and cannot be adapted to the needs of the surviving dependents.

In addition, charitable acts cannot be accomplished by law, and special verbal arrangements may not be carried out if the heirs do not agree.

Persons may be omitted from the legal distribution of the estate, such as an in-law, whom the

deceased may have wished to recognize in some tangible way. Also, ownership in a business may be divided among family members, some of whom may have no interest in it. A farm or other business may have to be dissolved because of such a problem.

A Court-Appointed Guardian

When there is no will and minor children are among survivors, the court appoints the guardian with preference given to the surviving spouse, if the court finds this in the best interest of the child.

If the court decides otherwise and the child is more than 14 years old, the court may appoint a person designated by the child.

In other cases, the court may appoint any other person who would be an heir of the child if the child were deceased or any other person who would be eligible to administer the estate of the child if the child were deceased.

There are additional legal fees involved when the court must appoint a guardian and the person so appointed may not be one the deceased parent would have desired.

A Court-Appointed Administrator

When there is no will, the probate court appoints an administrator with preference given to the surviving spouse if he or she will accept.

If there is no surviving spouse, the role is granted to another relative, depending on his acceptance.

Administration of an estate also may be granted to a creditor who applies.

Whoever he is, the court-appointed administrator must post bond, which is an additional expense. The surviving spouse, if appointed, may not be competent. In addition, the administrator chosen may not be a person whom the deceased would have desired.

^{1/}alice mills morrow, csu extension assistant professor, home management (6/15/71)

Planning to Write a Will

If a person does not wish his estate to be handled by Colorado law, he should write a will.

No matter how simple a will is, the help of an attorney is necessary in writing it.

If an individual has a regular attorney for other business purposes, he may consult him about a will. If the attorney does not do this type of work, he will suggest another attorney who does.

When a person does not have a regular attorney, a friend may be able to suggest one whom he knows and trusts. The Lawyer Referral Service also can refer persons to competent attorneys in their area. The address of the service is Lawyer Referral Service, University of Denver Law Center, 200 W. 14th Ave., Denver, Colorado 80204.

After selecting an attorney, the individual must make an appointment to see him and plan the will.

Most attorneys charge no fee for the initial visit to secure their services. Charges begin after an attorney has been engaged to write the will.

Even before selecting the attorney, the individual should begin work on his will and have a general idea of his desires regarding the disposal of his property and what he wants his estate to do for his heirs. The attorney will need to know the extent of the estate, how much property it includes (individually or jointly), what transfer provision already exists (such as a named beneficiary) and how much indebtedness exists against the property.

In order to have a will when it is needed, the time to write it is now. In addition, a will should be reviewed periodically to make sure that it continues to meet the changing conditions and serve the best interests of the individual. An attorney can help make changes as the need arises.

figure 1: How an estate is distributed according to Colorado law if there is no will

<u>Surviving Heirs</u>	<u>Distribution</u>
Spouse and children	One-half to surviving spouse One-half to surviving children and descendants of children
Spouse, no children or descendants of any child	Whole estate to survivor
Children, no spouse	To children and the descendants of his children who are dead, the descendants collectively taking the share their parents would have taken if living.
No spouse, no children or descendants; mother or father living	To father and mother equally; if no father then to his mother, if no mother then to his father.
No spouse, no children or descendants, and no parents	To brothers and sisters and to the descendants of brothers and sisters who are dead, the descendants collectively taking the share of their immediate ancestors, in equal parts.
No spouse, no children or descendants, no mother or father, no brothers, sisters, or descendants	To grandmother and grandfather, uncles, aunts and their descendants, the descendants collectively taking the share of their immediate ancestors in equal parts.
None of the relatives already mentioned	To the nearest lineal ancestors and their descendants, the descendants collectively taking the share of their immediate ancestors in equal parts.

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