

NEW YORK INTESTACY

(PART 1)

*Once You Know a Little Bit About Intestacy,
You'll be Able to Better Understand Why Making the Choice
to Begin Estate Planning Is Such a Wise Decision*



MICHAEL ROBINSON
ROCHESTER NEW YORK AREA ESTATE PLANNING ATTORNEY

When people begin the estate planning process they are often surprised to find out that a lot of the choices they get to make have already been made for them by state law. Much of this is because of intestacy. Understanding what intestacy is and how it affects your estate planning is essential. Once you know a little bit about intestacy, you'll be able to better understand why making the choice to begin estate planning is such a wise decision.

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ESTATES

To get an understanding of intestacy, we first have to understand what an estate is. In the legal sense, the word “estate” does not refer to a large piece of property or large home. An estate is simply all of the property you leave behind after you die. Whether you have a lot of property or little, everyone leaves behind some kind of estate.

Though everyone leaves behind an estate, the law treats different types of estates very differently. We can place estates into one of two categories: intestate and testate estates.

A testate estate is one that is accompanied by a valid last will and testament. Every capable adult in the state of New York has the legal right to create a will. Through your will you can make certain decisions, including choices about how you want to distribute inheritances after death.

If you make a last will and testament that complies with New York will laws, a court will accept it as a valid expression of your wishes. In this situation you leave behind a testate estate, and as such, your property will be distributed in accordance with the terms you made in your will.

Let's contrast this with an intestate estate. When someone dies without leaving behind a last will and testament, that person is said to leave

behind an intestate estate. With an intestate estate there is no will to determine who should receive an inheritance. Instead, state laws will have to make these inheritance decisions.

It's important to point out that when we talk about an intestate estate,



we are talking about the presence of a *valid* last will and testament. Validity, in this sense, means that the will a person leaves behind complies with laws established by the State of New York. If the document meets those standards a court will accept it as a valid will. If there is a problem and the document fails to meet the legally imposed standards, a court will not accept it, and it will be an invalid will.

Only a valid last will and testament will create a testate estate. All other estates are intestate.

INTESTATE INHERITANCES

The inheritances you leave through a last will and testament are easy to determine. Yet when you leave an intestate estate, the question of who inherits your property becomes a little more complicated. Inheritances in these situations have to be distributed under intestate succession laws. These laws determine that, depending on the circumstances

present at death, different people will be entitled to receive an inheritance.

It's best to look at intestate succession by looking at an example. Let's say that your uncle dies and leave behind an intestate estate. At the time of his death he was married, had two adult children, two siblings, and a surviving parent. Who will inherit his property?

Under New York's intestate succession laws, your uncle's surviving spouse will inherit the first \$50,000 of his estate, plus half of anything that's left over. The remaining half will be distributed to his two children. Everyone else receives nothing.

Now let's contrast this with a different scenario. Let's say your uncle died a bachelor and did not have any children. Both of his

parents were deceased, but he left behind two siblings. In this situation, the two siblings would receive an equal portion of his intestate estate.

Finally, let's take a look at a third scenario. Let's say that you have a friend who left behind an intestate estate. That friend was not married, didn't have any children, and didn't leave behind any identifiable living relatives. In this situation the state of New York would actually inherit all of your friend's property. This is true regardless of whether your friend expressed his desire to leave his entire estate to a charity, whether your friend had been living in a committed but non-married relationship for decades, or anything else. Though this kind of situation is rare, it does happen.



CHOOSING TO AVOID INTESTACY

The most important point to take away from our discussion on intestacy in New York is this: intestacy is something you can avoid. As long as you are a capable adult you can create legal devices that allow you to make inheritance choices on your own. You are under no obligation to rely on intestate succession laws to determine who inherits your property. If you want to leave your entire estate to a charity, a friend, or to anyone else, you are free to do this as long as you take the appropriate steps.

It is also important to remember that intestacy is something that applies by default. If you fail to take the appropriate actions your estate must be distributed in accordance with New York's intestacy laws. Barring the creation of the appropriate legal documents, there is nothing that will prevent this from happening. Even if you would have wanted to pass inheritances in a way other than that dictated by intestate succession rules, your wishes will not have any effect if you leave an intestate estate.

In our next discussion on intestate succession in the state of New York we will look at some practical ways in which you can avoid intestacy. Until then, if you would like more information about intestacy, have any questions about inheritances, or need legal advice of any kind, schedule an appointment to come talk to us as soon as possible.

About the Author



Clients notice Michael Robinson's unique approach to his estate planning practice the minute they walk through his office doors. Mike has established a law practice that provides clients with a warm, comfortable and relaxed atmosphere staffed by professionals who believe in providing highly individualized attention.

That's especially important in Mike's practice, because estate planning is an often personal process reflecting the most cherished hopes and dreams of his clients.

"The estate planning we do for our clients," Mike explains, "often represents the culmination of their life's work. That's why we take a personal interest in

helping them complete estate plans that suit their needs and that address the unique circumstances of their families."

There's one last difference clients often remark upon in Mike's estate planning practice. "Because we concentrate on estate planning exclusively, we have the focus to bring state-of-the-art, cutting-edge estate planning techniques and strategies to a broad range of clients, no matter how diverse."

Mike's firm has the breadth of expertise to provide its clients with estate plans ranging from the basic to the very sophisticated, including offshore asset protection trusts.

His office regularly conducts seminars on estate planning topics throughout the Rochester and Finger Lakes area. Mike has also been a guest speaker on the subject of estate planning before a variety of professional organizations.

The Law Office of Michael Robinson, P.C.
196 North Main St.
PO Box 417
Naples, NY 14512

