

NEW YORK INTESTACY (PART 2)

*A Look At Some of the Practical Concerns that Arise
When Someone Dies Intestate and How the Process
of Intestate Succession Actually Takes Place*



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In our second discussion of intestacy laws in the State of New York, we're going to take a look at some of the practical concerns that arise when someone dies intestate. Our previous discussion looked at who inherits intestate property. In this discussion, we are going to look at how this process actually takes place. One should always talk to a lawyer for specific advice about any legal process, but here are the basics of what you need to know.

INTESTATE ADMINISTRATION

Let's say that someone dies in the State of New York but does not leave behind a last will and testament or any other type of estate planning documents. In order to take possession of the deceased person's property, someone will have to initiate a legal proceeding. That person will have to go to a local Surrogate's Court, file documents notifying the court that someone has died, and ask the court



to appoint someone to administer the estate. This entire process, from the opening of a new case to its conclusion, is generally referred to as intestate administration.

The intestate administration process involves numerous steps, each of which is governed by specific procedures and laws. So, when someone asks a Surrogate's Court (the New York version of a probate court) to begin a new intestate administration, the court will then have to name an estate administrator.

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The administrator is responsible for doing most of the day-to-day work involved in settling the estate, or making sure that estate property is managed and distributed in accordance with New York law.

The administrator is usually, but not always, the person who asks the court to open the intestate administration. For example, if your spouse dies and you ask the probate court to open a new case, it will likely name you as the estate administrator. However, if you are not willing to serve as administrator, or someone challenges your ability to properly manage the estate, the court might choose to appoint someone else.

Yet regardless of who the court appoints, it will fall to the administrator to find out what the decedent owned, determine who the rightful legal heirs are, and distribute estate property to the rightful new owners.

ESTATE DEBTS

Another significant issue that arises when people die intestate is that they leave their family without clear answers. In many situations, those family members can be confused about what happens to the property their deceased loved ones left behind. For example, a lot of people contact an estate planning lawyer because they are worried that they might have to pay for the debts left behind by the deceased.

When someone dies intestate, that person often leaves behind both assets and debts. While determining who is entitled to inherit the assets is fairly easy under New York intestacy laws, determining what happens to those debt obligations is sometimes more difficult.



The essential process goes like this. First, a Surrogate's Court will appoint an estate administrator. Next, that administrator will inventory the estate property and allow creditors to file claims. Once all the creditors file claims, the administrator has the responsibility to examine those claims, determine which are valid, and then use estate funds to pay any debts in a specific order.

Your estate planning lawyer can explain more details about the manner and order in which estate debts are repaid, but the important point to understand here is that it falls to the estate to pay the claims, not the heirs or the family.

There is one significant exception to this general rule, however, and that



comes when someone owns a joint debt with the decedent. For example, if a husband and wife have a credit card that is in both of their names, both of them are obligated to repay the debt, regardless of who

used the card to make purchases.

So, if a husband dies leaving behind credit card debt of \$5,000 for purchases that he made, his wife will still be obligated to pay that debt if she was a joint account holder on the card.

However, in some situations an unscrupulous creditor might try to contact family and friends of the deceased person in an attempt to get them to pay back the estate debts. If the creditor contacts you and tries to convince you to, for example, accept responsibility for an unpaid

debt, you need to speak to a lawyer. While creditors can contact you in many situations, there are specific actions they cannot take. If they cross the line, harass you, or do anything illegal, you can take steps to protect yourself.

IF YOU WANT TO AVOID INTESTACY, YOU NEED AN ESTATE PLAN

If there is a single lesson to take away from our discussions on intestacy in the State of New York, it's this: intestacy is avoidable. While the majority of people never take the step of creating a comprehensive estate plan, you don't have to be one of those people. If you decide that avoiding intestacy is important to you, you can create an estate plan that will allow you to make choices that would otherwise have already been made for you through intestacy laws.

When you decide to make an estate plan, you and your attorney will sit down, talk about your situation, evaluate your options, and then create tools that allow you to protect the choices you want to make. Failing to take this step will mean that your estate will be distributed in accordance with New York intestacy laws regardless of what your desires are.

If you haven't created an estate plan, need legal advice, or simply need someone to talk to about your options, contact the Law Office of Michael Robinson as soon as possible so we can help you.

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.

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