

# Client Newsletter

Dibble & Miller, P.C.

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## Spousal Rights in Estate Proceedings

We previously examined the various ways in which property can transfer upon the death of a family member or loved one. Here, we will discuss the rights which are specific to the spouse of a decedent when a decedent dies without a will, and also when a decedent dies with a will which excludes his or her spouse. We will also discuss a surviving spouse's rights to certain property belonging to the decedent regardless of whether or not the decedent died with a will.

### Spousal Rights when the Decedent Dies Without a Will

As mentioned in our last newsletter (April 1, 2014 – No. 080), if an individual dies without a will, property owned individually by the decedent with no joint tenant and no beneficiary designation becomes part of the decedent's estate and passes by what is known as intestate succession.

A spouse has two rights under New York's laws of intestate succession. First, the surviving spouse has the primary right to be appointed as the administrator of the deceased spouse's estate and to manage the collection and distribution of estate assets to those who are entitled to receive an "intestate share" of the estate.

Second, the New York laws of descent and distribution provide that if a decedent is survived by a spouse and no lineal descendants (i.e., children, grandchildren or great-grandchildren, natural or adoptive), then the surviving spouse is entitled to receive the entire estate. Conversely, if the decedent dies with lineal descendants, then the surviving spouse is entitled to receive the first fifty thousand dollars (\$50,000) of the estate plus one-half of the remaining balance, with the decedent's descendants receiving proportionate shares of the remaining one-half interest.

The amount received by the surviving spouse and descendants will be reduced pro-rata for administration expenses, debts and taxes paid by the estate. Also, a spouse must be legally married to the decedent to receive a share of the estate and to act as administrator.

### Spousal Rights when the Decedent Dies With a Will – the Elective Share

New York's elective share law contains "forced distribution" provisions which protect a legally married surviving spouse in the event that a decedent dies with a will, but the will does not provide for the surviving spouse. For the reasons discussed below, it is virtually impossible to disinherit a spouse in New York.

The elective share rights of a surviving spouse are defined by statute and allow the surviving spouse to receive fifty thousand dollars (\$50,000) or one-third of the decedent's net probate estate, whichever is greater, and regardless of what provisions are made for the spouse in the decedent's will. If the total value of the decedent's net estate is less than \$50,000, the surviving spouse receives the entire estate.

In other words, the statutory elective share laws override the terms of the decedent's will if the decedent (a) intentionally disinherits the surviving spouse (i.e., the testamentary dispositions found in the will provide nothing at all for the spouse), or (b) constructively disinherits the surviving spouse by leaving less than the value of the elective share of the decedent's estate to the surviving spouse. Also, the right of election protects the ability of the surviving spouse to inherit from a decedent who attempts to give away assets to someone other than the spouse through the use of testamentary substitutes (i.e., assets that do not pass under the decedent's will such as a joint bank accounts, trust accounts, or transfers of property made within one year of the decedent's death for less than full value). For the purpose of determining a spouse's rights, testamentary substitutes will increase the size of the decedent's net estate and therefore, the amount a spouse may claim pursuant to the right of election.

### Timing and Other Procedural Issues

The surviving spouse must personally assert his or her right of election (except in limited circumstances) within six months of the date when the Surrogate's Court issues Letters Testamentary to an executor or Letters of Administration to an administrator. Moreover, the right of election cannot be asserted more than two years after the decedent's date of death. Finally, the spousal election must be in writing and it must be served upon the decedent's estate in accordance with statutory requirements.

A surviving spouse may be "disqualified" from successfully asserting a right of election if it can be shown that, (a) there existed at the time of death a valid decree or judgment of divorce, annulment, separation, or dissolution of marriage, (b) the surviving spouse abandoned the decedent, (c) the marriage was bigamous, incestuous, or otherwise prohibited, or (d) the surviving spouse had a duty to support the decedent and failed or refused to do so.

Additionally, a surviving spouse may "waive" his or her right to elect against a deceased spouse's estate prior to the decedent's death. A waiver must be in writing, signed by the spouse making the waiver, and acknowledged in accordance with statutory guidelines. A waiver may be validly executed either before or after marriage, and is typically contained in a prenuptial, postnuptial, or separation agreement.

Finally, even if a decedent dies intestate (as discussed above), the elective share may expand a surviving spouse's rights to share in the deceased spouse's estate beyond the rights afforded under the laws of intestacy, as the surviving spouse may be able to claim rights to those testamentary substitutes which are not otherwise included in an intestate estate.

### Additional Spousal Protection

A little known, but very important, property right for a surviving spouse is what is classified as "exempt property." Certain property which belonged to the decedent will pass to the surviving spouse automatically and regardless of the laws of intestate succession or the existence of a will, unless the spouse is disqualified from taking an elective share.

A surviving spouse is entitled to receive exempt property in values not exceeding:

- \$20,000 for household furniture, appliances, electronics, etc.;
- \$2,500 for the family bible, photos, videos, books, etc.;
- \$20,000 for farm machinery, tractors and domestic animals;
- \$25,000 for one motor vehicle; and,
- \$25,000 in money and personal property belonging to the decedent.

If the full value for a particular category is not used, or if a particular item does not exist, that value cannot be used to expand the amounts available in other categories.

*Dibble & Miller, P.C., is a full service law firm familiar with the issues involved in the probate and administration of estates. We would be pleased to consult with you regarding any type of estate matter – including estate planning, management, administration, will contests or other disputed matters involving estates and decedent's property.*

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