

## DETERMINATION OF HEIRS

**F**redrick P. Waid is an Of Counsel member of the Firm who practices in trust and probate litigation, among other areas of law. Fred and other attorneys at the Firm work closely with clients' trust and estate planning professionals to maximize clients' opportunities for successful resolution of trust and probate disputes.

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The death of a loved one is always challenging for people, but can be much more difficult if no will is left behind. When someone dies without leaving a will, courts must appoint an administrator to determine who is entitled to the deceased's assets. The deceased's property and assets then proceed through a process called probate before it can be distributed to the heirs. Each state has its own "intestacy laws," laws declaring who is in line to receive the property and monies left by the deceased. If a person dictates in a will who is to receive certain assets of the estate, then these individuals are known as beneficiaries. If there is no such stipulation in the will, then the courts determine who the heirs are under the law.

Typically the spouse to whom the deceased person was married at the time of death gets most of the estate and will receive it all if the deceased left no surviving children, parents, or siblings. If a couple is living together and common-law marriages are recognized by the state, then the surviving "spouse" must prove that he or she meets the requirements to receive the benefits of an heir.

If the deceased has one child, usually the surviving spouse and the child split the inheritance 50/50. In cases of multiple children, typically the spouse keeps 1/3 and 2/3 goes to the rest of the children. They can be natural born or adopted; an adopted child has the same rights to the estate as a natural

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...continued.

born child. An adopted child also has the right to inherit from both the adopted as well as natural parents.

If a person dies without a spouse or children, grandchildren are next in line. If there are no grandchildren, then the parents follow in order. Finally, siblings come last. Parents, brothers, and sisters are known as "collateral heirs" because they don't descend directly from the deceased. Each state has its own laws dictating the order of heirs.

A judge at a determination-of-heirs court proceeding hears evidence to decide who is an heir and how much of the estate each heir will receive. The court will appoint an attorney to protect the interests of unknown, missing, disabled, or underage heirs.

Hutchison & Steffen's attorneys aggressively represent clients in a wide range of trust and probate litigation before probate, district, and federal courts in trial and on appeal. The Firm has successfully resolved disputes both in and out of court, and is experienced in litigating and resolving issues regarding the transfers of assets from a deceased's estate. Cases run the full spectrum from million-dollar will contests to smaller family disputes. ■



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