



## Probate

by John D. Whitaker

OK, let's assume for a moment that you just died. What should we do with your stuff? The answer to this question depends upon several preliminary questions. First, whether you left a valid will. Second, how much stuff you had in your name when you died.

If you die with a will, your property will be distributed according to your wishes as expressed in the will. The probate procedure is used to determine the validity of the will. A will is a written legal declaration of how a person wishes to have their possessions distributed after death. Notice that I said written. For a will to be valid, among other things, it must be in writing, witnessed by two non-interested, competent persons and signed by the person making the will. Tape-recorded statements are not valid. The will must also show that the person making the will understood that they were making a will and that it was their intention to dispose of all their property upon their death.

One major exception to this rule is a holographic will. This is a will entirely in the handwriting and signed by the person making the will. Even with no witnesses, these wills can be valid, if they are done correctly.

If you don't leave a will when you die, your property is distributed pursuant to the Wyoming Intestate Succession statute. Intestate just means that you did not leave a will. This statute directs how your property is distributed if you did not express your wishes in a valid will. Who gets what depends upon who is alive at the time of your death. Spouses, children, and children of deceased children are the first class of people who take property under the statute, and it progresses out to



include parents, brothers and sisters, grandparents, aunts, uncles and their descendants. The term "children" includes adopted children, and they are entitled to their share as if they were blood children.

The next major issue is the property subject to probate. There is a reasonably complicated process for determining which property is included in the estate. For example, if you had a life insurance policy naming your oldest son as the beneficiary, this policy would pay him directly and would not be part of your estate. How the property is titled, whether car, house, retirement account, etc., determines whether it must be part of the estate.

The probate of a will, or the administration of an intestate estate, is a statutory process. Essentially all of the decedent's estate is gathered up and valued. The real estate is sold, and the property not specifically given to someone is sold for cash. All of the decedent's bills are paid and then the proceeds are distributed under the terms of the will or the intestate succession statute. Careful court scrutiny is applied in either case to insure that any potentially interested person receives the correct share of the estate.

Wyoming has a procedure where smaller estates can be distributed by affidavit where the net value of the estate is \$150,000 or below. This is a much simpler process and is much quicker.

The closing of an estate can be a very emotional and complicated process, and a competent probate attorney is strongly recommended. In fact, a good estate planning attorney should help you through this process before you die to insure your wishes are respected. The only way to avoid the hassle of closing your estate is to not die. That is my plan.