

legal lines

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Lawyers

Who Will Be "The Objects of Your Bounty"?

By Dan Moore

The answer to this question will probably be the beneficiaries of your living trust or the legatees under your will. If you don't have one of those when you die, everything you own in your name will be parceled out on the basis of Illinois' Statute of Descent and Distribution. That is the will the state legislature has made for you, establishing your heirs at law.

It is possible that this "will" the legislature has provided will suit you just fine. It says that if you leave a spouse and at least one descendant (child, grandchild or great-grandchild), your spouse will get half of everything and the descendant or descendants get the other half - per stirpes. There are those old Latin words! It's legal shorthand for saying that half goes in equal shares to all of your children, with children of a deceased child divvying up the share of your child who was their mother or father. Example: John dies leaving wife Jane, son Jack and daughter Jill. A third child, Jerry, died before his father, but his two children, Joyce and James, survive their grandfather. Whatever John owned in his own name at his death (not in joint tenancy or in some payable-on-death form) would be divided: one half to widow Jane, 1/6 to son Jack, 1/6 to daughter Jill, and 1/12 each to grandchildren Joyce and James. Now, isn't it a lot simpler to just say "descendants per stirpes"?

If John had left his wife Jane, but no descendants, Jane would get everything. If John left no wife, but a descendant or descendants, they would receive everything, on the same formula described above for the one-half.

From there, if John leaves no spouse or descendants, it goes on to give the estate to his brothers and sisters and his parents, the surviving one of whom would get a double share. If John has none of those, cousins by dozens will get little slices of the pie. Not even any cousins? Well, finally it would go to the State of Illinois. That's called "escheating."

If the Statute of Descent and Distribution doesn't meet your personal desires, you'll have to make your own will or living trust. There your choices are limitless. Well, almost. You still can't take it with you. But you can control it for a long time after you've departed, through continuing trusts - say for minor children or grandchildren or an adult disabled loved one. A will or trust makes it possible to make special gifts to cher-

ished daughters-in-law and sons-in-law or just to friends.

A final important difference: you can make charitable gifts with a will or trust. These can do a lot of good and make you feel good, too. And, if the deceased person's estate is large enough to generate an estate tax (\$675,000 this year), the charitable gift can be a real bargain. It could mean that every dollar you give a charity will really only cost your estate 63 cents - or less - a do good, feel good, good deal!

So, who will be the objects of your bounty? Your heirs at law under the Statute of Descent and Distribution? Or your personally selected legatees under your will or similarly selected beneficiaries under your trust? The choice is yours and we're ready to help.

Introducing Steven Collins



Please join us in welcoming Steven S. Collins to our firm as an associate attorney. Steve is a South Dakota native and a 1998 graduate of the University of South Dakota School of Law. In law school, he was editor-in-chief of the Great Plains Natural Resources Journal and a two-time participant in the Pace University Environmental Law Moot Court Competition in New York. In 1997, during his second year of law school, he was mobilized as a peacekeeper in Bosnia-Herzegovina with the 129th Public Affairs Detachment of the South Dakota Army National Guard.

Mr. Collins is licensed to practice law in Illinois and is admitted to practice before the Central Illinois U.S. District Court. He belongs to the Decatur Bar Association and also the Illinois State Bar Association where he is a member of the Public Relations Committee.

Steve also belongs to the Kiwanis Club of Decatur and is a member of the Illinois Army National Guard. He and his wife Cindy live with their daughter Madelyn in Decatur.

How Do You Own The Castle?

By Dan Moore

If you own your residence with a spouse, your title may be a joint tenancy. With this very popular type of home ownership, when one of you is no longer living, the surviving spouse owns the home without going through probate.

A newer form of home ownership for husband and wife in Illinois called TENANCY BY THE ENTIRETY. It can only be created by a husband and wife for their permanent residence. Tenancy by the entirety has the same survivorship rights as joint tenancy, but it has some new benefits that joint tenancy does not.

- (a) If someone, even the IRS, gets a judgment against only one of you, the home is safe from court action to satisfy that judgment.
- (b) One of you alone cannot sell, mortgage or give away your entireties interest. In contrast, a joint tenant doing that destroys the other's survivorship right or encumbers it with a mortgage.
- (c) If a marriage is dissolved, the tenancy by the entirety automatically becomes a *tenancy in common*. Each former spouse then owns one-half, which would go to their respective heirs or legatees at death occurring while the home is still so owned.

Every married couple who presently owns or may in the future buy a home should at least consider whether these added advantages of tenancy by the entirety would be best for them. We could assist you in making that decision and in preparing and supervising the recording of the necessary documents to achieve tenancy by the entirety for your residence, if that is your decision.

Drink OR Drive – You Can't Do Both

By Bob Wrigley

If you think the drinking and driving laws for adults are tough, for a teenager they are even tougher. You cannot both drink and drive a car as a teenager. If you should consume any alcohol and be stopped for driving a motor vehicle and you test .01 or greater BAC (Blood Alcohol Content), your driver's license will be suspended...the first time for a period of three months. And if you refuse to take the blood alcohol test the first time, you will have a six month suspension. For a subsequent offense of driving with over a .01 BAC or failure to take the blood alcohol test, and you are under the age of 21, you will have an automatic two-year suspension. If you are under the age of 18, you are ineligible to receive a Judicial Driving Permit for purposes of driving to and from work or during the course of your employment, or for any purposes for which a Judicial Driving Permit may ordinarily be issued.

If you are convicted of DUI and are under the age of 21, you will have a minimum two year revocation of your driver's license, whereas the minimum for an adult over 21 is one year. On a second violation of driving under the influence, you would not be able to be licensed until you reach the age of 21 or have had your license revoked a minimum of at least three years.

The court may also, as a condition, require you to have a supervised visitation at a state or private rehabilitation facility that cares for victims of motor vehicle accidents involving persons under the influence of alcohol or a facility which cares for advanced alcoholics to observe persons in the terminal stages of alcoholism. You may also be required to visit the County Coroner's office or the County Morgue to observe pictures of victims of motor vehicle accidents involving persons under the influence of alcohol.

Another restriction for drivers under the age of 18 is a that **second** conviction of any moving violation will include a minimum 30 day suspension. For drivers over 16 and under 21, conviction of two moving violations within a 24 month period results in a minimum 30 day suspension. These suspensions, of course, will be subject to longer periods of time upon any subsequent offense.

Driving laws are getting tough and the driving and drinking laws are getting tougher. These laws, designed to protect lives on our highways, are toughest for individuals under the age of 21. If YOU are under the age of 21 you have your choice, you can either drive a motor vehicle or you can drink - you cannot do both.

Moore, Susler, McNutt,
Wrigley & Root, L.L.C.
3071 North Water Street
Decatur, IL 62526

(217) 872-1600

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