

WORRIED YOUR ESTATE WILL GO TO THE STATE WHEN YOU DON'T HAVE A WILL

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I often hear clients come into my office worried that if they don't have a Will their assets will go to the State of Florida and not to their beneficiaries or heirs. They are often surprised to learn the likelihood of that happening is very remote. However, it is possible within the State of Florida that unclaimed funds will escheat to the State's School Library fund under very limited conditions.

Florida provides a decedent's estate will end up with the State only if the proper heirs of a decedent cannot be found or identified. When no heir can be identified or located the funds will eventually flow to the State of Florida unclaimed funds division for ten years and then to the State's School Fund. The transfer to the School Fund is a last resort because the State is not an heir and not entitled to a decedent's estate; however, the State is also a sovereign in keeping with being a guardian or Trustee for a decedent's estate.

So what procedural steps occur that causes a person's estate to eventually end up in the School Fund? When a person passes with no Will and no immediate heirs are identified, Florida's intestate statutes take over and look for an individual who is legally entitled to inherit from the deceased person's estate. Florida statutes provide that such persons must be within a certain degree. Those degrees are: 1) surviving spouse; 2) lineal descendants; 3) decedent's parents; 4) descendants of parents; 5) grandparents; 6) descendants of grandparents; and, 7) kindred of the last deceased spouse of the decedent as if he or she had survived the decedent and then died entitled to the decedent's estate. Based on these degrees of descendants, it is rare that a related person cannot be identified, but when it does occur, the estate funds will escheat to the State of Florida and ultimately to the School Fund.

Just remember, that even if a person from the above list can be identified does not mean that they can be located. They may have died or changed their names and no record exists to locate their whereabouts which can have the effect of not being able to locate them.

So what happens if I know who the persons are who are entitled to inherit but cannot be located? When this occurs, the personal representative or Trustee of an estate can request the Court to issue an order directing that a beneficiaries share be deposited with the Clerk of Court Registry. If the amount of the funds deposited into the Court Registry is greater than \$500.00, the clerk will publish notice of its existence once a month for two months. If no one comes forward, and after 6 months following the first date of publishing such notice, the funds are deposited with the Chief Financial Officer of the State of Florida. The funds are then deposited in the State School Fund as unclaimed funds for a period of ten years. Does this mean that an heir that is eventually located cannot recover his or her share of the funds? The answer is recoverability is available for 10 years.

Who determines if a person cannot be identified or located? During the course of an estate administration when it becomes clear that heirs of an estate will need to be located, the attorney handling the estate will usually employ a search company to dig through all known sources of ancestry files to identify an estate's heirs. Some of these searches involve Social Security records, marriage records, birth records, immigration records, death records, military records, census records, baptismal records and Court Records. When a record is or is not located, an affidavit is constructed by the search company specifying the diligent search that was performed and the outcome of such search.

Should no one be found, the Court will then enter an order stating that after a diligent search no heir can be located or identified whereupon the court will issue and order granting estate funds be placed into the Court Registry shall and eventually to the State of Florida Unclaimed Funds. Property that is not liquid (e.g. real estate) that escheats to the State must be sold and the proceeds deposited with the Chief Financial Officer of the State of Florida.

During the 10 years unclaimed funds remain with the Chief Financial Officer, should an heir wake up and request their unclaimed funds, the heir will typically re-open the decedent's estate and request the court to determine he or she is entitled to the funds as an heir. When this occurs notice to the Department of Legal Affairs for the State of Florida is served whereupon the heir must prove their lineage to the decedent. Once lineage is determined, the heir will receive their share of the funds, without any interest.

As you can see, the State of Florida is not really interested in having your estate assets escheat to said State. The State of Florida grants as much leeway as possible to find and deliver a decedent's estate to those persons entitled to his or her funds. Ideally, if you want to be sure your estate turns up in the hands of those persons entitled to it, then in such event seek the attorney of your choice and have a Will or other Testamentary document prepared. Even if you can't get to the attorney of your choice, at least write down the names of those persons who are related to you (e.g. a family tree) to assist in identifying and locating heirs should you pass unexpectedly.

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