

Is everybody's will for everybody?

BY SHEILA MILLER

Last week we took a closer look at the laws governing estate and inheritance taxes. These are the rules and regulations that can spell financial shakeups for any family settling an estate when ill-prepared.

The federal and state taxes are the cream of the estate—they will come off the top of the estate's total worth unless special tax-saving provisions are made. Making these provisions and spelling out how a person's possessions shall be distributed are jobs that a properly drafted will can do.

First off—what is a will? According to Circular 567, Estate Planning for Pa. Families, put out by Penn State, a will is "a legal instrument or written document which directs the transfer of your property after your death."

"A will makes it possible to specify the distribution of special kinds of property such as valuable antiques or sentimental items; transfer cash, land, farms, and business to particular heirs; create trusts for your spouse, children, or other family heirs; select a trustee to administer any trust; divide the remainder of the estate as you wish; select an executor to settle your estate at minimum cost; select a guardian to look after your younger children and their property; and specify gifts of property or money to churches, hospitals, colleges, or other charitable institutions."

We are all familiar with the old will where Farmer Brown scribbles down on the back of a torn envelope his desires for the distribution of his worldly possessions and places it safely in the family Bible.

The "I bequeath to..." type of will is one means of dividing up the assets in a person's estate, but whether it does all of the above items is doubtful unless Farmer Brown was also a lawyer.

Anyone will admit that even the "I bequeath..." type of will is better than none.

But, what happens if the decedent's young and perhaps unmarried. Most young people do not have wills drafted by attorneys and have not taken the time to jot down their wishes on what should be done with their possessions in case they should die.

Not high on the list of most young people are thoughts of death—and drawing up a will would be one of the furthest things from their minds.

The fact is, however, in Pennsylvania, anyone that has reached the ripe old age of eighteen is legally qualified to have a will.

Well, in the event that a person hasn't gotten around to the morbid business of the 'Last Will and Testament', the state has taken care of the grisly details.

R. Darrell Ford, of Estate Arcehtypes Inc. in York, said he feels the state's will is fair and equitable, but it's inflexible. "It has to be if it's going to apply to millions of people," he added.

For any resident of the Commonwealth of Pennsylvania who dies without drafting a personal will, the Commonwealth has come up with the following plan to objectively handle the settlement of the estate.

If the decedent was married with two or more children, the state says:

—All of the property owned jointly between the

husband and wife would go to the surviving spouse.

—The property owned absolutely, or solely by the decedent, would be distributed with the first \$20,000 plus 50 percent of the remaining assets going to the spouse. The other half would be divided among the children.

In the case of a death of either husband or wife where there were no children, the state will provides that:

—All of the property owned jointly between the couple would go to the surviving spouse.

—Of the absolutely owned property, again the surviving spouse gets the first \$20,000 plus half of the

remaining assets. The remaining 50 percent would go to the mother and father or surviving parent of the decedent. If neither of the parents was still living, then the remaining 50 percent would go to the surviving spouse.

The Commonwealth did not neglect the individual who may have no surviving spouse, children or descendants. In this case:

—The mother and father, or the surviving parent of the decedent, would inherit the total assets of the estate.

—If both of the decedent's parents are deceased, the estate is to be equally divided between the brothers and sisters.

If none of the above plans apply, the state searches the decedent's family tree until a surviving relative is found for distributing the estate.

The state's plan may in fact be an adequate will for some individuals, but then again it may not be for most.

For example, consider the case of a young farm couple we will call Bob and Sally Smith.

Bob and Sally, both in their early 30's, were too busy with their two small children and their farm work to take the time to write a will.

Bob was tragically killed in a farming accident, leaving Sally and the two preschool age children, alone.

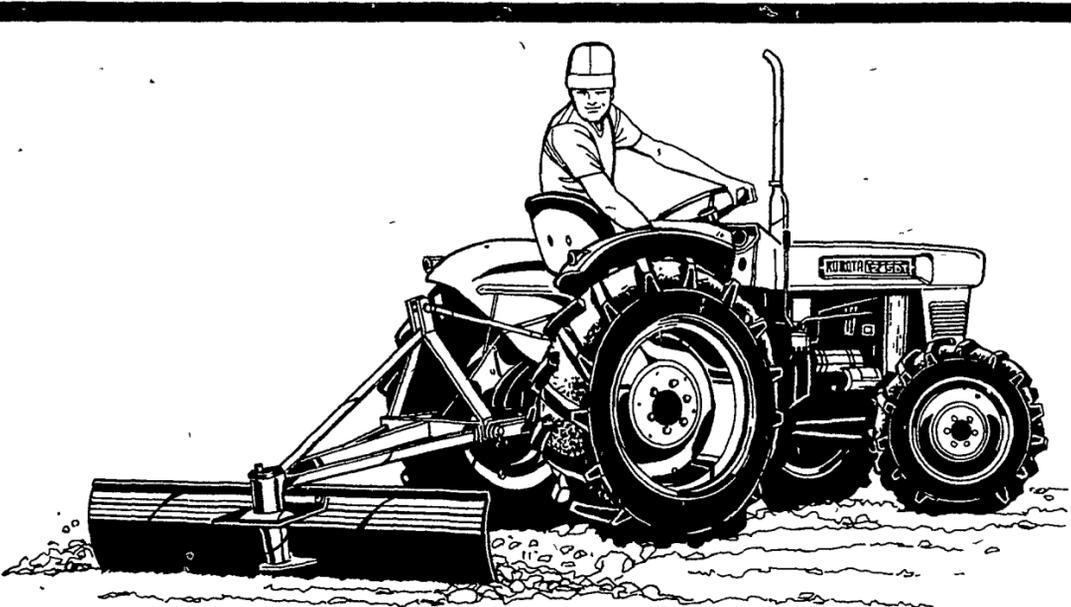
Fortunately, the farm and most of the equipment were owned jointly by Bob and Sally. Bob's personal assets came to \$67,000.

Under the state will, Sally received the first \$20,000 and \$33,500 of the additional assets. The Smith's two children received the other \$33,500.

But, without a personal will, Sally had no legal basis for receiving the money inherited by the children. Just because she was their mother did not give her the right, according to the state.

The money was distributed to the children through a legal guardian, the Orphan's Court. Whenever

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