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CHANGES TO THE FLORIDA PROBATE CODE MAKE ESTATE PLANNING EVEN MORE IMPORTANT IN 2011

Under current s. 732.102(2) of the Florida Statutes, when a decedent passes away without a Last Will and Testament (“Will”) their surviving spouse will inherit (i) the decedent’s entire estate if there are no other descendants; (ii) the first \$60,000 in property of the estate, plus one-half of the remaining balance if the decedent is survived by descendants who are lineal descendants of the surviving spouse; and (iii) one-half of the estate if the decedent is survived by descendants who are not lineal descendants of the surviving spouse. In many cases, this plan of disposition would be similar to what a decedent would have incorporated into a Will drafted for them.

Effective October 1, 2011, the intestate dispositive provisions under s. 732.102(2) for a surviving spouse will be identical whether the decedent passed away with descendants with his or her spouse or with no descendants. This change will create an incentive for individuals, who would not otherwise create an estate plan, to have an estate plan drafted to ensure his or her descendants receive a share of their assets at death.

The law also creates s.732.104(4) which provides that a surviving spouse’s intestate share, who has descendants that are both descendants of the decedent and descendants not related to the decedent, will be one half of the estate. The decedent’s lineal descendants will inherit the remaining one-half of the estate. This change is significant in that it had not been previously addressed by the intestate provisions of the Florida statutes.