

THY WILL BE DONE by Atty. Angelo M. Cabrera

INTESTATE SUCCESSION

Many people have this notion that it is better to die without a will as the law on intestate succession will at least guarantee equal shares among the children, assuming that all are legitimate.

While this is true for the most part, it is important to remember that in intestate succession, the portions of compulsory heirs in the inheritance are definite only in terms of their percentage shares relative to the entire estate. These percentages are theoretical divisions and do not correspond to any specific property. The determination of who will get what specific property will still have to be decided by the heirs who become co-owners of the undivided estate upon death of the estate owner until the portions of each and every heir are concretely determined either by their agreement or by court order. In other words, the heirs will have to come together to discuss how to partition the property and they must reach a unanimous decision to move forward without the need for court intervention. Absent a unanimous agreement, the issue will have to move from the confines of a private family affair to a public forum.

I recall a funny story about how five heirs consulted their family lawyer concerning the partitioning of their co-owned property that they inherited located in one of the major thoroughfares of the metropolis. It was rectangular in shape with one of the smaller sides as frontage.

After studying the matter, the lawyer suggested that a right of way be created on one side of the property and then divide the remaining by five, handicapping the portions nearer the street: the nearer the street, the smaller; the farther from the street, the bigger. Everybody agreed to this solomonic decision but did they come to a settlement? No. Why not?

If you were one of the heirs, which would you choose, the lot fronting the street, right? Without any instrument or guide indicating the wishes of the parents, each heir had a say on why he should be given preference. When they couldn't agree, the lawyer gave another suggestion.

“Why don't you divide the property lengthwise so each of you could have a street frontage and perhaps operate a bowling alley or two?”

Thankfully, that remark lightened the mood in the room as everybody had a good laugh. Otherwise, they would probably have left without reaching an agreement and worse, with heavy hearts toward each other. The siblings eventually came into a settlement with another suggestion from the lawyer – a practice dating back to the ancient biblical era – the drawing of lots. In the book of Numbers in the Bible, one

can read about how the promised land was distributed among the tribes of Israel – through the drawing of lots.

Everybody agreed and this time, the matter was settled. Sometimes, it only takes the application of common rules of equity and fairness to solve what appears to be a complicated issue.

The same approach can be employed where, for instance, there are a number of real property assets for distribution. The heirs could first agree on dividing the assets into shares or lots based on the number of heirs with each lot to be composed of portions of the assets for distribution. After agreeing on the composition of the lots, they can then draw lots to determine who will get what.

While equality in terms of the values of the lots cannot be guaranteed here, at least they will all participate in determining the composition of these lots and will have equal chances in the draw.

But this does not always work. I know of a case where three siblings agreed to draw lots, only for the eldest, the most domineering among them, to turn his back on the agreement when he did not get what he wanted. So employing this approach will require an important element to make this work – good faith – the commitment to abide by the results of the draw.

This highlights the problem of no planning, which is usually evidenced by the absence of any instrument to guide the heirs in the distribution of the estate. Remember, in intestate succession, the heirs shall be left to settle among themselves and oftentimes, this comes at the expense of family peace and harmony.

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If you would like to learn more about inheritance issues, I will be conducting an Estate Planning Seminar on November 24, 2012 at Oakwood in Ortigas Center. For inquiries, email elyonpublishing@gmail.com or text 0917 8010384.