The Elderlaw Forum: a kitchen table, shotgun, and $30000

by Professor_Michael_Myers

An old man, living alone in a small, once-abandoned farm building on a Nebraska hillside died last week, following a brief admission to a nursing home.

He died â€œintestate,â€• without a will, at age 84. He left behind a 23-year-old Dodge pickup truck, a kitchen table, a bed, two rifles, a shotgun and $30,000 in savings. He had never married, had no children, and his parents were long deceased.

â€œWho gets his property?â€• asked his 82-year-old sister in a call to the USD Senior Legal Helpline. â€œDoes â€˜sheâ€™ get it?â€•

â€œSheâ€• is a niece, who sometime during the past year was given a power of attorney by her deceased uncle. â€œShe never told the family she had the power of attorney until he was moved into the nursing home,â€• said the caller. â€œI asked her to show us his bank records, but she refused. What should we do?â€•

I advised that when her brother died the power of attorney terminated. His property, including the $30,000, belongs to his estate, to be distributed in accordance with Nebraska probate law, which provides that the caller and her two sisters, as siblings of the deceased, will each receive one-third of the net estate.

â€œAsk the court to designate you or one of your sisters as personal representative of the estate,â€• I advised. â€œThen obtain a court order directing the niece to turn over all of your brotherâ€™s property.â€•

The niece believed that since her name was on the accounts that she and her uncle jointly owned the $30,000 and that upon his death she became the sole owner of whatever was left in the accounts. I told the caller that her niece was wrong. A power of attorney conveys â€œpowerâ€• to act on behalf of someone else; it does not convey â€œownership.â€•

In this case, the niece had a duty to act in her uncleâ€™s best interest. She will not inherit the truck, the table, the bed or the accounts. Had the uncle wished for her to have his property upon his death, he must have so stated in a validly-executed will. Since he died without a will, Nebraska probate law controls.

One of his sisters will drive home in the Dodge pickup and one-third of whatever monies are left after a â€œmodest, but proper burial.â€•

(Pro bono legal information and advice is available to persons 55 and older through the USD Senior Legal Helpline, 1-800-747-1895; mmyers@usd.edu. Opinions solely the authorâ€™s; not those of the University of South Dakota).

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