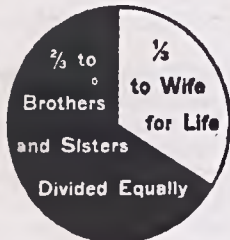


# Where There's a Will—There's a Better Way

## Married Man with No Children or Other Descendants

REAL ESTATE



OTHER PROPERTY



## Married Woman with Children or Other Descendants

REAL ESTATE

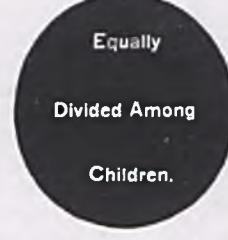


OTHER PROPERTY



## Widow or Widower with Children or Other Descendants

REAL ESTATE



OTHER PROPERTY



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By CHESTER S. DAVIS

That humming sound, like the distant drone of ghostly bees, that you hear is caused by past generations of Tar Heels spinning in their graves. They didn't take it with them but, oh my, how they wish they had!

In this state most men and women die without writing a will. Their property, therefore, is distributed according to what are nicely described as common law rules. In North Carolina those rules are much more common than most.

In nine out of ten states a man who dies intestate (without a will) can go to his Maker comforted by the thought that his property will be distributed among those persons nearest to him and most dependent upon him. But any North Carolinian who carried that warming thought beyond the Pearly Gates is destined to sit on a cloud plucking nothing but sour notes on his harp while, in angelic dismay, he observes the fruits of a lifetime's labor going in every direction but the one he intended.

North Carolina is one of the very few states which continue to observe the ancient distinctions between real and personal property. The results are fascinating in a ghastly sort of way.

Suppose, for example, that Husband dies without a will, leaving a \$15,000 home and enough personal property to pay his debts. He is survived by Wife, by a brother named Ichabod and by his parents. Under our present law, title to the home will go to Ichabod. All Wife gets is a life interest in one-third of that home. The parents get nothing.

If, however, Husband had died leaving only \$15,000 in personal property the distribution would be quite different. Here Wife would get the first \$10,000 and the remainder—\$5,000 in our example—would be shared between Wife, who would get half, and Husband's parents. Here Ichabod gets nothing.

The results are just as strange if you reverse the example and

have Wife die without a will. Suppose Wife leaves a \$20,000 home and she is survived by Husband, and by two nephews of her dead sister, Mary.

Here title to the home goes to the nephews. Husband gets a life interest in that home providing he and wife had had children. If there had been no children, born alive, Husband would take nothing.

In the case of personal property, Husband fares better than Wife. If he dies without a will and is survived only by Wife and by his parents, she takes the first \$10,000 in personal property and shares all above that amount with Husband's parents. If, however, Wife dies childless and without a will, Husband takes all of her personal property.

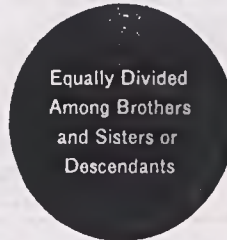
Neither husband nor wife fare particularly well when there are surviving children. Suppose Husband dies without a will and leaves \$50,000 in stocks, bonds and insurance. He is survived by wife, aged 75, and by nine grown children. Here Wife shares equally with the children, taking only \$5,000. Although her needs are greater, our law gives her only a child's share in personal property.

In North Carolina, a husband or wife never can inherit real property directly from one another in the absence of a will, except in those relatively rare cases where there are no other heirs to make a claim.

Men and women who, during their lifetime, watched every dime's worth of their property with the eyes of a hawk are content to go to their grave trusting that the law will distribute their property in a sensible manner. But North

## Married Woman with No Children or Other Descendants

REAL ESTATE

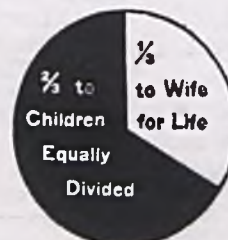


OTHER PROPERTY

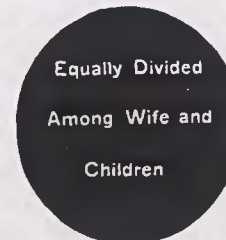


## Married Man with Children or Other Descendants

REAL ESTATE



OTHER PROPERTY



Carolina's intestacy law will never do that until it is rewritten to meet the needs of this day.

Our intestacy law was written in its present form in 1808. For the past century and a half it has remained essentially as it was written. There were a few amendments but they were of relatively minor importance.

In 1935 the General Assembly appointed necessary changes in the state's "outmoded" and "needlessly complicated" intestacy laws. Headed by Senator Carl T. Bailey of Plymouth, the commission undertook a four-year study of existing laws. In 1939 the commission concluded that "North Carolina needs an entirely new and modern intestacy law."

The Bailey Commission presented the legislators with a proposed was 165 pages long. Horrified at the prospect of even being required to read such a lengthy document, the General Assembly at first pigeonholed the recommendations made by the Bailey Commission and then forgot them.

But some of the members of that Commission — men like William E. Church, Forsyth County's able clerk of court, Fred McCall of the University of North Carolina, and Dr. Malcomb McDermott of Duke University—continued to agitate for an intestacy law which was, at the very least, in step with the social needs of the 20th century.

In 1945, the General Assembly created the General Statutes Commission and gave that commission the interesting assignment of studying North Carolina's substantive law with an eye on locating areas of the law which could profit-

ably be revised and modernized.

Soon after the commission's creation, Professor McDermott button-holed Robert F. Moseley, chairman of the General Statutes Commission, and told Mr. Moseley that of all the state's laws none were so desperately in need of revision as the antiquated rules governing intestate succession.

In 1957, the General Statutes Commission was given \$5,000 by the General Assembly to finance a study of the state's intestacy laws. The actual study was done by Norman Wiggins of the Wake Forest Law School, Bryan Molich of the Duke Law School and Fred B. McCall of the University of North Carolina Law School.

All three men were keenly aware of the defects of the existing law. Professor Wiggins, while at Columbia University, used North Carolina's intestacy law as the springboard for his Master's thesis. Each of these men had studied the proposals made by the Bailey Commission in 1939.

In fact, McCall was one of the chief draftsmen of the original Bailey report.

For the past year this study team has analyzed the faults of the existing law and made recommendations for their correction. The nine revision proposed by the three law professors. Out of this patient, painstaking analysis has come an entirely new intestacy law. Every provision in this new law, which will be proposed to the 1959 General Assembly, has the unanimous approval of all nine members of the General Statutes Commission.

This new law, besides being written See **THERE'S A WILL**, Page 7