

SENATOR LUEDTKE: You are not dieing intestate of this thing happens you are dieing probably with a will and you have done something to try to dispose of your property and cheat your wife out of it.

SENATOR MURPHY: In section 36, deals with wills or intestate procedure?

SENATOR LUEDTKE: If you are talking about the section that I think, what section are you talking about? You must be talking about the augmentative estate or the election?

SENATOR MURPHY: I am talking about section 36, page 26 dealing with intestate, and I am not going to give anything away, the state is probably going to take it.

SENATOR LUEDTKE: Alright, you are talking about the elective share of the surviving spouse, that is not under the intestacy section that is under the separate, part 2, electing share of surviving spouse which is the sophisticated term is the augmented estate but it is more easily understood to call it the elective share of the surviving spouse. That is what I have been explaining.

SENATOR MURPHY: Now then I am looking for the occasion why, if I have an interveillious trust or if I have an insurance policy dedicated to my wife or if I own property that I have given to my son or my daughters during the course of my marriage, why that must be put back into the estate to then be probated.

SENATOR LUEDTKE: It is only for distribution that is all. It is not a matter of probate. This is, we have the same thing today I mean it is not different, the concept you just haven't seen it perhaps those are the practice of law see it where people come in and take an elective, the elect to take under the intestacy statutes today. It is no different.

SENATOR MURPHY: You did say elect to take under the intestacy statutes?

SENATOR LUEDTKE: Yes. That is correct. That is the statutory share.

SENATOR MURPHY: Senator today, do you take an insurance policy dedicated to my wife, do you take that and put it into that augmented estate today?

SENATOR LUEDTKE: No you do not.

SENATOR MURPHY: You do under this though?

SENATOR LUEDTKE: That is correct. Now are you saying that your wife is the beneficiary? Of that insurance policy? If she is the beneficiary then it is figured in that she gets it.

SENATOR MURPHY: So I can not issue her a policy of insurance and have it exempt from probate?

SENATOR LUEDTKE: Well it is exempt from probate but it is not exempt from federal state tax anyway.

SENATOR MURPHY: I am not talking about federal or state tax, and I am talking about probating my estate.

SENATOR LUEDTKE: No, well it is exempt.

SENATOR MURPHY: Which means that I can not write a specific contract of moneys to be delivered to my wife on my death and not have it put back in a probated and go through this routine of probate.

SENATOR LUEDTKE: Well it is exempt from probate but not from distribution, that is what I said before.