The Law and You
Your Questions

Readers of this column occasionally send in questions. They arrive in the form of written letters or by e-mail. And, I have attempted to respond to each of them.

Although a response is given to the questions, I thought it might be helpful if all readers had the benefit of my responses. So, this month's column is devoted to some of those questions and responses.

I don't use the term "answer" because sometimes there is no clear right or wrong answer. Rather, my response may be a reference to other sources for more information and sometimes a complete answer requires more facts or more space than this column allows.

QUESTION: *My father-in-law recently died without a Will. He was in his second marriage but with no children. My wife was his only child. Who inherits his estate?*

RESPONSE: Our "intestate laws" govern how an estate is to be distributed for someone who dies without a Will. If the deceased had no children from a prior marriage, everything would pass to his current wife. Having children from a prior marriage, his estate is divided equally between his current wife and his children from a prior marriage.

QUESTION: *My vehicle was repossessed from the parking lot of my apartment complex which is private property, but I only owed $475. Do I have a case for illegal repossession?*

RESPONSE: Repossession can take place any time and any place if it can be done without breaching the peace. Taking a vehicle in a parking lot or in a private driveway is permissible as long as it is done without any resistance. The amount owed is irrelevant.

QUESTION: *My mother passed away without a Will and left a home which my brother put in his name just before she died. He was supposed to put the property in a trust for me and my other brother, but he never did. Now he has passed away without a Will. What can I do?*

RESPONSE: Since mother transferred her home prior to her death, she actually did not leave a house in her estate. Brother failed to provide a Trust and died without a Will. Thus, as in the response above, the intestate laws will govern who receives the home. There is insufficient information about Brother to know who receives the home.

QUESTION: *My father had life insurance with my stepmother as beneficiary. Upon her death, he changed the beneficiary to his grandchildren. The change document was witnessed and sent to the insurance company, but he died days later. The insurance company would not honor the change because it was not received until two days after my father died. His Will left everything to his grandchildren. What can I do?*

RESPONSE: Utah Code governs how and when a change of beneficiary takes place. § 31A-22-413(2) states in part:

> *An insurer may prescribe formalities to be complied with for the change of beneficiaries, . . . The insurer has actual notice if the formalities prescribed by the policy are complied with, or if the change in beneficiary has been requested and delivered to an agent representing the insurer <u>at least three days prior to payment to the earlier properly designated beneficiary</u>.*

Since the insurer received notice two days after the father died, but presumably more than three days prior to issuing payment to

anyone, the change should be effective.

QUESTION: *My parents recently passed away and left me a life estate in their home. My brother is a drug addict, alcoholic, and career criminal. He now wants half of the house. Is the life estate iron clad?*

RESPONSE: Life estates are valid, assuming that the owners of the home properly executed a deed granting the life estate. The brother has no right to be added to the deed. However, no information was given about what happens to the home after the life estate terminates. A review of the actual deed would be necessary to determine what happens to the home after the life estate ends.

QUESTION: *I enjoyed your article on Living Wills. Is there any way I could get more copies?*

RESPONSE: All of my articles are posted on my web site. They are arranged in chronological order of publication. Just click on "Utah Spirit" and locate the name of the article you desire. Each article is available for reading or printing as you choose.