

What happens when you die without a will?

If you fail to plan your estate and die without a will, it is known as dying “intestate”. If you die intestate, the state where you live at the time of your death will create an estate plan for you, and you will not have any influence over who receives your assets. As a result, your heirs could enter into a long and potentially costly process known as “probate” in order to sort out who receives what.

Probate is a court-supervised process by which your heirs are identified, and your assets are subsequently distributed. Depending on the nature of your estate, the probate process can last anywhere from a few months to up to several years. While you may have avoided the responsibility of creating an estate plan that reflects your wishes, you may unwillingly pass on those burdens to your heirs. Having a will does not necessarily eliminate the need for probate, but it will streamline the process and provide important guidance to those who administer your estate.

In your will, you designate who you want to serve as executor of your estate. By doing so, you can be reassured that someone you trust will be handling your affairs after you die. The executor will be in charge of identifying and collecting your assets, managing and paying your outstanding debts and obligations (e.g., Who will pay the electric bill? Who will file my final tax return? Who will collect my mail?), and distributing your property pursuant to the terms of your will. Without a will, the probate court will choose from a list of individuals determined by statute to serve as executor.

Equally as important, if you have young children a crucial element of your estate plan is the opportunity to designate who will serve as their guardian. This can be imperative if neither you nor your spouse survives them. If you do not have a will, a judge and governing state law will select the guardian and make this important decision for you.

Intestacy laws vary significantly from state to state, but many states dictate that if you die and leave a spouse and children, your assets will be split amongst your surviving spouse and children. If you have no children, the state will decide which of your blood relatives will be beneficiaries of your estate. Typically, property that is not given to a spouse is distributed in this order:

- Your children
- Your parents

- Your brothers and sisters; or if they are not living, their children (i.e. your nieces and nephews)
- Your grandparents; or if they are not living, their children (i.e. your aunts and uncles)
- Children of your deceased spouse
- Relatives of your deceased spouse
- The state of your legal residence

While this order may include many of the individuals you wish to include in your estate plan, it may also include unintended recipients (including the state itself) and will likely exclude important recipients you wish to benefit. Any cherished pets, lifelong friends, or charitable causes that you were passionate about in your lifetime will not be among the beneficiaries unless you have made such directions in your will.

There are also negative tax consequences for your estate that can occur on both federal and state levels. If you don't have a will and don't take advantage of tax avoidance methods while you're alive, the government may assess these taxes on the property distributed to your heirs, further eroding their inheritance.

One of the best ways for you to avoid some of the unfavorable circumstances above is to consult an estate planning attorney and draft a will. With a properly planned will, you should be reassured knowing that your loved ones will be cared for, your philanthropic intentions fulfilled, and the legal and personal consequences of your death have been thoughtfully considered beforehand.

We welcome your questions. The University of Chicago's Office of Gift Planning can be reached at 866.241.9802 or giftplan@uchicago.edu.