



# Intestate Law Overview

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**W**hen you don't have a will, the state will make one for you. Your property will go to your heirs under the laws of the state in which you reside by intestate succession.

## **MOST AMERICANS DON'T HAVE A WILL**

When you die without a will you have little control over what happens to your assets and how or when your minor children take their shares. The purpose of intestate statutes is to distribute the decedent's property in the way the average person would have designed his or her estate plan, if he or she had a will. However, who knows what you really want unless you write it down? Even if you have expressed what you would like to see happen; such as, "If both my husband and I are killed, you would raise our children," unless your wishes are written in a valid will, your wishes may be ignored.

## **WHO GETS YOUR STUFF?**

If you are married and want your surviving spouse to have your entire estate, you must write a will because your state's laws may only give your spouse a portion of your assets. Do you want your spouse to report annually how he or she is managing the money of the minor children? Do you want your spouse to have to borrow money from your kids, or ask them if he or she can sell some stock to buy a new car? Do you want your children to receive all of their inheritance at such a young age that they are not ready for the responsibility? If you want to protect your loved ones, you must plan to sign a will and (often) a revocable living trust before it is too late. You must decide who gets what and when they get it. You can only control who gets your stuff if you create an estate plan.

## **1990 Uniform Probate Code**

The 1990 Uniform Probate Code (the Code) is the starting point for many states' intestacy laws. State laws vary, but generally you can assume your close relatives will take your property before distant relatives. The people who get your property first would be your surviving spouse, then your descendants (kids and grandkids).

If they are not living, or if you have none, your parents would take, then your siblings, and then your nieces and nephews. If none of them are living, your grandparents would take and next, your aunts and uncles and cousins. Adopted descendants are the same as if naturally born. If you have no living relatives, your property goes to the state.

## **Probate**

With or without a will, your estate will go through probate unless you have created an estate plan with a revocable living trust. Some states do allow smaller estates to be administered outside of the probate process if they are under a certain amount (e.g., under \$100,000 and contain no real estate). If the costs of probate and attorney fees plus the time delays become a burden, a surviving spouse may ask the court for an advance against the estate.

Costs and fees of probate may reduce an estate by three to five percent. Your “net estate” is the amount left for distribution to heirs after all debts, taxes, and administrative expenses have been paid. Settlement of an estate through the probate process may take a year or more. Probate is public and denies you the privilege of keeping your most personal affairs private. When an estate goes through probate, your friends and neighbors may attend court hearings deciding who gets the kids and who gets the house.

## **WHO GETS YOUR KIDS?**

If you die without a will, under which you would normally name guardians of your minor children, the court will decide who qualifies to raise your kids and who will manage their money. Under state law, a minor or incompetent person may have a guardian of their person and a guardian of their property appointed. If you do not want your children in the hands of strangers — the court, lawyers and bankers, you must take the time to decide who gets your children.

After the Marshall University plane crash in which some families suffered the loss of both parents, minor children were in court for a couple of years while relatives fought for the right to raise the children. Grandparents were pitted against their other surviving children, and both petitioned the court to be considered favorable as guardians. Inherited funds were delivered to bank trust officers who were to keep the funds safe until the children were of legal age to take their money.

If you want to prevent family disharmony and protect your loved ones from themselves, predators, and well-meaning friends and relatives, prepare your estate plan with a Revocable Living Trust naming trustees to manage the money and a Pour Over Will designating guardians to raise your children.

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*Ellen Gay Moser counsels individuals and families to: Protect their assets; exit their business; provide for loved ones and obtain peace of mind. Her mission is to “Protect Family Values for Generations.”*

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