

Estate Planning: What Happens if I Die Without a Will?

As estate planning attorneys, the thought of someone dying without a will, makes us cringe. Why? If you die without a will, you completely lose control.

There are three main purposes for a having a will and each and every person, age 18 or older, needs his or her own will. No exceptions.

In a will, you:

1. Appoint Guardians for Minor Children.
2. Appoint a Personal Representative (i.e. Executor)
3. Distribute Assets to selected beneficiaries in the most appropriate manner

Appoint Guardians for Minor Children

If you have children, under the age of 18, you use your will to appoint primary (and contingent) guardians to raise your children, in the event you cannot.

- The guardian of the child's person is in charge of making education, medical, lifestyle, and general welfare decisions.
- The guardian of the child's estate handles the money you leave in your estate for your child. However, please note that a minor cannot legally inherit and, likely, the best way to leave assets for your children is in a trust, whether that be a trust within your will or through a separate trust. The Trustee of the Trust will manage those funds.

Without your input as to the appointment of a guardian, the court can appoint anyone it chooses to be your children's guardian

Family members and friends may fight over the children, especially if you leave significant assets for them; or, your children may be placed into foster care, if no one steps forward to take them.

To stay in control and determine who raises your children, if you cannot, you should have a legally valid will.

Appoint a Personal Representative

You use your will to appoint a personal representative (i.e. executor.) This person collects, protects, and appraises your assets; pays your last bills; files your taxes; deals with creditors and beneficiaries; and distributes remaining assets to your beneficiaries.

This person has access to all of your personal records and finances. He or she will know what debts you owed at your death and what assets you had.

If you are like most people, you like to keep this information private and limit it to those who you trust completely.

If you do not appoint a personal representative in your will, the court will intervene and decide who will be appointed administrator. The court, not you, will decide who serves.

Distribute Assets

Your will determines who gets what after your death. If you don't have a will, state intestacy laws determine who will inherit your estate and it may not be who you choose (no matter your spouse's financial situation or how old your children are.).

For example, in Pennsylvania, if you die with a spouse, but no children, your spouse gets the first \$30,000 plus 50% of your estate and your parents get the other 50%.

If you do have children, your spouse gets the first \$30,000, plus 50% of your estate and your children get the other 50%.

For example, in New Jersey, your surviving spouse or domestic partner will inherit the first 25% of the intestate estate (but not less than \$50,000 or more than \$200,000), plus 75% of any balance, if you die without descendants but have a then living parent. Your parents get the remaining 25%.

If you do have surviving children, but all of your children are not also all of the surviving children of your spouse or domestic partner, your spouse/domestic partner gets first 25% of the intestate estate (but not less than \$50,000 or more than \$200,000), plus 50% of any balance. The children get the remaining 50%.

No client has ever walked into any of our offices and asked for an asset distribution that looks like the plans that the states have for you, if you don't execute your own will.

If you die without a will, you lose control; the courts and state law will take over, choosing who raises your minor children, who serves as personal representative/executor, and who receives your assets. To stay in control, consult with a qualified Rothamel Bratton estate planning attorney. Protect those you love. If you have any questions or would like to schedule an appointment, please call our Haddonfield, Lawrenceville, or Philadelphia office at 856-857-6000. We look forward to your call.