



What If I Die Without

A Will?

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Of all the estate planning questions that I hear in my practice, the most common one is: “What if I die without a will?”

People are often concerned that the state where they live will receive their property if they die without a will or a trust. Actually, this rarely happens. What does happen is that the laws of the state where they live will determine who gets their property. The state only gets the property if no living heirs can be found.

When someone dies without a will or trust, that person is said to have died intestate. That means the intestacy laws of the state of residence will determine how the property is distributed. Each state has its own intestacy laws, but such laws generally provide a hierarchy whereby the closest relatives receive the property in certain shares. For example, in both Illinois and Missouri, the spouse and children are entitled to the property. If there are no children or a spouse, then parents or siblings will inherit the property. If there are no parents or siblings, then more distant relatives will receive the property.

The intestacy laws can sometimes lead to unwanted results. For example, most people want their spouse and children to inherit their property, but they may want the spouse to inherit first, and the children to only receive what is left after the surviving spouse dies. Without a will,

however, the children will be entitled to a share, even if the surviving spouse needs that property to live comfortably.

People in second marriages with children from one or both marriages need to be especially careful when considering an estate plan. In the example above the surviving spouse was hurt by the lack of a will or trust, but the children can also be hurt. For example, this can happen if all property is held jointly with the spouse from a second marriage. Jointly held property is not part of the estate of the first spouse to die. If all property is owned jointly with a spouse from a second marriage, children from the first marriage will not receive anything at the death of their parent. In other words, a house, bank account, or other assets held in the names of both spouses will pass to the surviving spouse at the death of the parent, and the children will not be entitled to any share of those assets.

When there is no will, the laws of the state also determine who will act as the executor or personal representative. Family members are given preference, but if family members disagree, the court will decide. And when there is no will, the executor or personal representative may be required to post a bond, which is an additional expense for the estate.

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