

WHAT HAPPENS IF YOU DIE WITHOUT A WILL?

Most people don't want to think about their own death, but if you want a say in what happens to your assets when you die, it's important to take the time to make a will.



By: Jen Morson - March 5, 2021

Creating a will should be considered a priority so you can have a say in what happens to your assets when you die. If you die without a will, the consequences range from minor inconveniences like delays to added stress to your loved ones.

What Happens if There is No Will?

Dying without a will, or dying intestate, means that your assets won't necessarily end up where you want them to. If you have joint bank accounts or accounts with a named beneficiary, those will almost always automatically transfer.

Shari Shore, who practices estate planning law in West Haven, Connecticut, as a partner and owner with Wolf & Shore Law Group, suggests consulting an estate planning attorney to best protect your assets.

"If you own financial assets that have a beneficiary, for example, a retirement account, certain pensions, and/or certain bank accounts, those can pass to a beneficiary without going through probate," Shore says.

Additionally, she says that real estate owned in joint tenancy with survivorship will automatically transfer to your spouse, but warns that other real estate co-ownership arrangements will not. "However, if you own property with anyone as joint tenants in common, your share of that property cannot pass to the co-owner without going through probate," Shore says.

Each state has its own intestate succession laws. In most places, the estate automatically transfers to the deceased's spouse and, for single persons, to any children or to the parents. According to Nicholas A. Bataglia, Esq., owner of Nablegal Marketing, there is always a risk of delay.

Bataglia says, "The drawback of intestate succession is that some assets may have to be 'unlocked' by a court. This means that bank accounts in one spouse's name will not automatically go to the other spouse when it is intestate succession. There will need to be an administration in probate court first."

What Is Probate?

Probate is the process that the court goes through to distribute the deceased's

estate. This applies to those with wills and without. According to Dan X. Nguyen, Esq., probate can be costly and public.

"This can be a public and expensive process depending on the dynamics of the family and value of the estate. In California, the cost of probate fees are tied to the value of the estate, and a good rule of thumb is an estate valued at \$500,000 will have probate fees of \$11,000," he says.

There is no way to fully avoid probate since all estates must go through probate court, but having a will and setting up accounts jointly can help streamline the process. Neal Shah, an estate planning attorney at Shah & Associates, notes that probate with a will in place gives the deceased control over how their estate is handled.

"When you create a will, you're effectively telling the probate court what you want to happen and who you want in charge," he says. "When you pass away without a will, the court must interpret what you would've wanted to have done and, because you haven't appointed the person or organization, the court has to approve whoever has stepped up. But what if there are multiple people? What if there's a dispute as to who should serve? What if there's a dispute with respect to who the actual beneficiaries should be?"

Other Considerations When Creating Your Will

For many, a living trust is a creative way to manage your assets while you are still living and ultimately avoid as much probate hassle as possible for those you leave behind upon your death. There are two types of living trusts: revocable and irrevocable. While the latter gives another person control over your estate while you are living, the former keeps you in control.

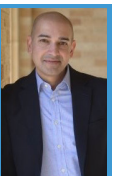
Nguyen recommends setting up a revocable living trust to avoid probate. He says, "For items that don't allow beneficiary designation, consider setting up a revocable living trust to avoid the probate process. Real estate is a very popular asset to place into a revocable living trust to avoid probate."

Another factor for setting up your will might be minor children or any incapacitated dependents. Neglecting to write a will means forfeiting control over who will care for your children upon your death.

Nicholas Amanti, a business and estate planning attorney in Massachusetts, also notes that without a will, the appointed guardian will have control over any inherited assets. He says, "Any assets which pass to minor children would be held and managed by their guardian—who may mismanage them—until your child is eighteen, at which point your child would have full access and control of your assets."

Drafting a will may not be a pleasant experience, but doing so is necessary for your wishes to be carried out after your passing. Everyone will die, and if you die without a valid will, you relinquish control of your estate to someone else, possibly someone you would not otherwise wish to have such control. By making a will, you will also help make your passing a little easier on your loved ones.

Neel Shah, managing attorney of the law firm of Shah & Associates is an attorney, financial advisor and author who provides insightful analysis and actionable strategies for Business Owners, Entrepreneurs, and Investors.



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