



## Intestacy and Why It Should be Avoided

*Intestacy, which is the legal term for death without a valid Will, results in the decedent's "estate plan" being created for him or her by the laws of the state in which he or she was domiciled at death. These local laws provide for the distribution of property owned by an individual who dies without a valid Will. While a Will is not required to pass assets owned jointly with rights of survivorship or by contract, such as an insurance policy or employee-benefit plan, you need a Will to bequest your other assets to ensure they are received by the individuals you have chosen, particularly if the assets have emotional or sentimental value. Otherwise, your state's intestacy laws will come into play, which could produce results you never intended. The need for a valid Will really has no bearing on the amount of wealth you may have. Even if you have modest wealth with no estate tax problems, you will need a Will, especially if you have minor children.*

Local intestacy statutes follow the general pattern of distributing a decedent's estate to his or her closest surviving relatives. However, the amounts to which each relative is entitled, and the degrees of relationship to which the intestacy law extends, varies from state to state. Thus, while intestacy laws are objective, they are extremely rigid. They deal only with familial relationships with the decedent, rather than the individual circumstances of each person's family and social situation.

There are a number of problems inherent with property that passes by intestacy. Some of these include the following:

- People whom you may have wished to benefit from your estate, but who are not legally related to you, will not inherit any of your property.
- The beneficiaries set forth in the intestacy statute inherit their shares outright, regardless of their age or ability to handle property. This is certainly an issue for minor children or family members with creditor or spendthrift issues.
- If the beneficiaries are minors, guardians must be appointed to handle the property. The choice of the guardian lies with the local court, and guardian fees must be paid out of estate assets. This leaves less of your estate to pass to your family.
- A surviving spouse will usually not receive an adequate share of the estate if there are surviving children, since oftentimes, at least half of the estate will pass to the children.
- The amount passing to your surviving spouse as his or her intestate share may not be enough to take full advantage of the federal estate tax marital deduction.
- Estate taxes which could have been avoided may be payable. This may happen where full use of the marital deduction isn't available because of the intestacy laws or when the assets passing to the children under the intestacy laws exceed the amount protected from Federal (or State) estate tax exemptions.
- Additional estate administration expenses may be incurred. This may include fiduciary bonds and fees for administrators and guardians appointed for minor children. These expenses could have been eliminated by appropriate provisions in a Will.



## Estate Planning

- The individual appointed to administer your estate will be chosen by the court, and the choice will be based primarily on the degree of familial relationship to the decedent, rather than on the competence of the person to handle the administration of your estate.
- If you have minor children and no surviving spouse, the choice of the children's guardian rests with the court. This often results in litigation concerning who is best qualified to care for the children. The person appointed is not always in the children's best interests, nor perhaps, someone you would have chosen to represent your values.
- If you are not survived by close family members, your estate will escheat, or pass, to the state.
- If creating a charitable legacy is important to you, intestacy deprives you of the ability to leave a portion of your estate to charity.
- The powers of the fiduciary chosen to handle your property are restricted to those granted under local law. The result is that your fiduciary must often seek permission from the court before they may act. This can result in costly delays to your estate, in addition to administration expenses that could have been avoided.

As you can see, having a valid Will provides you with the opportunity to leave your assets to those individuals whom you would like to benefit from your estate. You worked hard during your lifetime to accumulate your assets. Why leave it to chance that your intended beneficiaries will actually benefit from your efforts?

Please consult with your Guardian Financial Representative if you have any questions concerning this document.

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