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# What Happens If I Die Without a Will?

*Frequently Asked Questions*

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# *What Happens If I Die Without A Will?*

## **Your Property**

### **How Your Property Passes At Your Death Depends On How You Own Your Property**

Regardless of whether you have a Will, the form of ownership of each of your assets determines how each asset will pass at your death. There are several forms of property ownership, and each form of ownership dictates a different disposition of that property at your death.

**Co-Owned Property** is any property you own in a joint form of ownership, such as joint tenancy with rights of survivorship or tenancy in common ownership. Property owned in joint tenancy with rights of survivorship or tenancy by the entirety will automatically pass to the surviving joint owner at your death. In contrast, any share of property that you own in tenancy in common ownership will pass under your Will at your death, or if

you die without a Will, the state laws of “intestacy” will dictate how this property will be distributed.

**Beneficiary Designation Property** is any asset that has a beneficiary designation (such as life insurance policies and retirement assets). This type of property passes directly to your designated beneficiary or beneficiaries at your death.

**Trust Property** passes to whomever you designate in your trust. It is also possible to own property in trust by creating a trust during your lifetime and making that trust the owner of your various assets.

Finally, there is **Sole Property**, which is any property that does not have a beneficiary designation and is owned in your individual or sole name. **Sole Property** passes under your Will, or if you die without a Will, Sole Property passes by intestacy.

**Who Receives Your Property If You Die Without A Will?** If you die without a Will, your Sole Property and Tenants in Common Property will be distributed according to the State of Illinois laws of intestacy. The laws of intestacy are rigidly applied to all families regardless of their special needs and circumstances. In Illinois, the laws of intestacy provide that your property will pass as follows: If you have a spouse, your spouse receives 100% of your property if you have no children, or 50% of your property if you have children, with your children receiving the other 50% (or their descendants if a child has predeceased you). If you do not have a spouse, your property passes in the following order to: (1) your children (or their descendants), (2) your parents and siblings (or their descendants), (3) your grandparents (or their descendants), (4) your great-grandparents (or their descendants), (5) your nearest kindred as defined under Illinois law, and (5) the State of Illinois.

# *What Happens If I Die Without A Will?*

## Your Children

### What Happens To Your Minor Children and The Assets They Inherit If You Die Without A Will?

If you do not designate a guardian in your Will to take custody of your minor children and to manage their assets, Illinois law provides that anyone who is: (1) 18 years old, (2) a resident of the U.S., (3) of sound mind, (4) not disabled, and (5) not a felon may petition the court and request appointment as guardian of your children and their assets. If the court finds the petitioner is capable and qualified and also determines it would be in the best interests of the children for the petitioner to assume guardianship, the petitioner will be appointed guardian.

Your children will not only need a **Guardian of the Person**, who will have physical and legal custody of your children, but they may also need a **Guardian of the Estate**, who will manage their assets. A minor child may need a guardian of his or her estate if the child inherits assets worth more than \$10,000. If your child receives only the right to collect social security survivor's benefits, then a Guardian of the Estate is not required. One person may be appointed as the Guardian of the Estate and another as the Guardian of the Person, but oftentimes, the same person serves as both the Guardian of the Person and the Estate.

## Legal Advice

### How Can An Attorney Help You?

An experienced estate planning attorney will analyze all aspects of your personal, family, and financial situation and provide a comprehensive estate plan tailored to your unique needs and aligned with your family values.



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