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Home › Featured › What Happens When Someone Dies without a Will?

What Happens When Someone Dies without a Will?

Things can go wrong in ways families never imagine

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Years later, the story still haunts attorney Jennifer Cona.

A man—in his 70s and in good health—retained her to draw up a will. He wanted to bequeath his sizable estate to his grandson and to a few charities. He did not want to leave anything to his two grown children, who lived out of state and never called or visited.

“The grandson was very close and did everything for him,” said Cona, an elder attorney in Melville, NY. “While we were going back and forth over some of the details, [the client] died suddenly of a massive stroke.”

The will was not yet signed. The two grown children didn’t attend his funeral, but they inherited the entire estate. The grandson got nothing.

As Cona’s story shows, without a valid will, a deceased person’s wishes mean nothing. The laws of the state where the person lived dictate who inherits—and often, not in ways that many assume.

Lorie Burch, an attorney in Dallas, puts it this way for her clients, “If you don’t have a will, the state of Texas has one for you.”

Why No Will?



Most people know they need a will. Yet two out of three Americans don't have one, according to the 2022 Wills and Estate Planning Study by Caring.com.

Why not? Of those without a will, the study reported, one of three think they don't have enough assets to leave behind.

For many others, it is simply a matter of procrastination. Chris Krupa Downs, an attorney in Plano, TX, calls it the "Scarlett O'Hara philosophy."

"When it comes to making the decisions involved in creating a will, many people would prefer 'to think about that tomorrow,'" she said.

Some assume that, because family members get along, their heirs will do the right thing. Or they believe their family situation is uncomplicated and the assets will transfer easily.

Others don't want to think about death.

"There's this weird human element that clouds people's judgment," said Cona. "It's almost like they're superstitious. They think that, as soon as they sign their will, they'll go out and get hit by a bus."

Unpleasantly Surprised

Most people don't appreciate how difficult the probate process can be for surviving family members when there's no will in place—or the many unexpected ways things can go wrong. When a person dies without a will, everything that the deceased person owned falls into intestate succession: the state takes control of the estate and doles it out to the heir or heirs, according to the state's laws of intestacy.

With blended families, succession becomes more complicated. And state law doesn't take into account whether family members are estranged or whether an heir might have a drug addiction or a gambling problem.

"A lot of people are shocked to learn that without a will, all the decisions are made according to state law," said Burch.

Before the estate is distributed, there's a probate process to identify the dead person's heirs. Sometimes, secrets are exposed. Burch is following a case where a man, a member of the LGBTQ community, died without a will. Unbeknownst to his husband, the deceased man had fathered a child—now grown—in a one-time sexual encounter he'd had decades earlier. After his death, the daughter came forward and DNA testing proved paternity. With a will, the man likely would've left his entire estate to his husband. But without a will, by Texas law, biological children may have a claim on a parent's estate.

And now the whole story is a matter of public record.

"When there's no will, family secrets come out, and the process is super invasive," said Burch.

When the deceased has adult children from a previous marriage or gave up a baby for adoption long ago, and there's no will, things can get complicated.

Blended families often create surprises, too, depending on the state's laws.

"If you have children from a different marriage, it complicates things," said Catherine Forte, an attorney in Plano. "With blended families, the estate often doesn't go where you think it's going to go."

In Texas, for example, in situations where there is no will, it's not uncommon for adult children from a previous marriage to take an interest in the home occupied by the surviving spouse. The widow or widower is legally entitled to stay in the home, but if the stepkids want to cash in, they may pressure that person to sell.

Downs adds that when people die without a will, often their life history dies with them.

"I've had cases where someone died, and there's no one who knows what relationships they had in life," she said. "There's no one who knows the facts and the history of the person's life."

Duncan Webb, an attorney in Plano, shared the story of a middle-aged woman who died without a will. While she had many friends and professional associates, the woman never married and had no children. She had been tight-lipped about her family situation. When she died, her body lingered at the morgue for weeks because no family member claimed the body. Neighbors stepped forward to help; a court-appointed attorney ultimately located an uncle, who made the funeral arrangements. Her estate was divided between the uncle and a nephew she'd never met.

Similarly, Burch knows of a woman who died without a will, and who had had a baby decades earlier and given the baby up for adoption. Her spouse was aware of the child's existence but had no idea when or where the child was born or the child's gender. The court insisted that the child be tracked down to give his or her consent before the assets could be distributed.

"Now, how do you find that child?" Burch said.

Where's the Money?

When there's no will, finding the deceased's heirs is one issue. Finding the assets is another. That was the problem facing Kashif Ahmed when his father died in Pakistan in 2001. More than 20 years later, he's still tying up loose ends of the estate.

"As wise and as organized as he was, my father just never got around to creating a will or documenting his assets and where they were," Ahmed said. "And to make matters worse, he had multiple assets in multiple countries and continents."

Ahmed knows how to handle money—he is a wealth manager in Bedford, MA, and a lecturer in estate planning at Suffolk University and Bentley University. But the process was still a nightmare. Some of his father's assets were in nations where, even with a judge's order, bureaucrats demanded bribes

before they'd handle the paperwork to transfer the assets to Ahmed's name. He spent countless hours combing through his father's papers and trying to track down other assets.

An ATM receipt, found in his father's trouser pocket, led Ahmed to look for a bank account in Switzerland. After sending certified letters to virtually every bank in Switzerland, he eventually learned that his father had only withdrawn cash from an ATM machine while passing through the Zurich airport. There was no Swiss bank account.

Your Brain, on Grief

Even with a valid will in place, grieving family members often find the probate process frustrating and emotionally exhausting. Without a will, it can be overwhelming.

Sophia Dembling struggled with this after her husband, Tom Battles, died suddenly at age 59 in 2020 without a will. The situation seemed straightforward—the couple had been married for almost 30 years and had no children.

But her effort to access a few thousand dollars in a bank account, along with some uncashed checks, both in his name, has been a nightmare. Dallas County, TX, where she lives, required her to complete a small estate affidavit to prove she's the rightful heir. That meant compiling a list of all his possessions and obtaining notarized documents from her elderly in-laws, who lived in Chicago and didn't want to venture out during the pandemic.

The instructions on the county's website were confusing. She made mistakes; each time she refiled the affidavit, she got something else wrong. Dembling could use the money but still can't get access. Hiring an attorney would likely cost more than the total amount.

"It was so overwhelming and heart-wrenching," she said. "Just listing his possessions—the process was loaded with sentiment and sadness and love and regret."

Normally, she thinks the process might be manageable, but having to tackle it while grieving was too much.

One minor error can invalidate an online will or one that's handwritten.

"There is something called 'grief brain,'" said Dembling, who blogs about coping as a widow at *Psychology Today*. "In early grief, your thinking is really fuzzy. There's a lot of neurological energy going into just dealing with the loss."

Another area where a will is essential: providing for minor children. Without a will, the state will decide who cares for the children. It's possible for children to end up in foster care. Estate planning—usually a will as well as a trust—is also critical for parents of adult children with special needs.

"If you don't do your planning, the child can lose government benefits, like Medicaid or disability payments," Downs said. "In some cases, the wait lists to get the benefits are years long."

Attorneys warn that there are also situations where a will may exist, but it's not valid, or it doesn't apply. Wills must be updated whenever a family situation changes due to birth, death, divorce or marriage, or when moving to another state. And some designations can override a will. For example, the beneficiary named in a life insurance policy will get the money regardless of what the will says. Ditto for bank or stock accounts where the owner has named a payable-upon-death (POD) beneficiary, which overrides what's in the will.

Webb and Burch also advise caution with do-it-yourself options, like online wills or holographic wills. (Holographic wills are handwritten wills created by the testator and are legal in about two dozen states, with varying requirements.) Webb has handled cases where one seemingly minor error or omission—an insufficient number of witnesses to the will, for example—rendered a holographic will invalid.

Family Fighting

Webb often hears from clients who assume they don't need a will because their families get along. They trust their spouse or children to divide the estate fairly and peacefully. He's witnessed plenty of horror stories that contradict that. He cited a case of a man who died with a large estate. He had two daughters and no will.

“The daughters seemed to get along OK when he was alive, but after he died, they fought like cats and dogs and ended up spending \$150,000 in legal fees,” he said. “When you and your spouse are still alive, the relationship between children is often muted. The jealousies and envy stay below the surface. Once the parents are gone, all these things come to the forefront.”

Even when succession laws clearly state who gets what, Webb added, fights can arise. For example, if there's no will, all the heirs must agree on who will serve as executor, and that alone can start a war.

Cona adds that a will not only helps ward off conflicts, it can also help keep families together after a death.

“The best thing you can do for the next generation is to take care of estate planning,” she said. “It's the best gift you can give your loved ones.”



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