

Where There's No Will

SOMETHING BAD COULD HAPPEN. YOUR MOTHER-IN-LAW INHERITS YOUR HOUSE.
YOUR FAMILY GETS STUCK PAYING UNNECESSARY TAX.

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Do you have a will? In a recent PNC Wealth Management survey, 30% of adults with investable assets of \$500,000 or more admitted they didn't have this basic document. A Harris Interactive survey of the general population, done for lawyers.com, found 55% had no will.

If you die intestate--meaning without a proper will or living trust--your assets will be divvied up according to the law in the state where you live. To see how your estate would be distributed, based on your residence, relatives and net worth, go to www.forbes.com/finance and look for the retirement section. There you can try the intestacy calculator created by Johnstown, Pa. estate lawyer Kurt R. Nilson. You might be shocked.

Example: Married couples with kids typically write "I love you" wills leaving everything to each other, with the idea that the survivor will take care of the kids. And since 1991 the National Conference of Commissioners on Uniform State Laws, a group dedicated to rationalizing and harmonizing state laws, has urged states to make this the default for a married person with kids (but no children from a previous marriage) who dies intestate. "A lot of people think their spouse gets everything," says Nilson.

Yet only 16 states have made that the law. Some states have stuck to the traditional approach of giving a one-third share to the spouse, with the kids dividing the rest. Other states give spouses one half. Mississippi gives an equal share to the surviving spouse and each child; if there are nine children, the spouse gets one-tenth of the estate.

Think of the trouble this could cause. If your kids are young, your spouse will have the hassle of accounting for the kids' funds separately and the worry of what the darlings will do with the money when they come of legal age. If your kids are grown, your spouse may have to beg them for help to maintain his or her current lifestyle.

Even if you leave behind no kids, your surviving spouse may not get all your assets. In some states the deceased spouse's parents, siblings, nieces or nephews and even more distant relatives receive a cut.

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Moreover, without a will even a modest estate can get hit by unnecessary tax. You can leave any amount to a spouse free of federal and state estate taxes. You can also leave \$2 million to nonspouse heirs without federal estate taxes kicking in. But some states tax far smaller amounts left to nonspouse heirs. Say you die intestate in Pennsylvania with a \$2 million estate, a spouse and two kids. The state collects \$44,325, since each child gets \$492,500 (the spouse gets \$30,000 off the top and half of what's left), taxed at a 4.5% inheritance rate.

What if you die intestate with a second spouse and kids from a first marriage?



Your kids could end up with a lot less than you'd want. In the "I love you" states, the second spouse typically gets a minimum of \$100,000 and splits the rest 50/50 with your kids. But your 401(k) and other pension plans at work aren't part of that split; federal law gives them to the spouse, unless he or she has waived rights to them. The spouse gets the house, too, if you own it as joint tenants. The same goes for a jointly owned brokerage account. Your IRAs? They pass separately to whomever you've named as the beneficiaries.

Most states' intestacy laws are brutal on unmarried couples. Your live-in partner of 20 years could get nothing and be forced from your shared home.

"I've seen people come in and say, 'We're not really married, but for all intents and purposes we are,'" says Rebecca Manicone, an estate lawyer with Greenberg Traurig in McLean, Va. "Well, that doesn't cut it."

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California, the District of Columbia, Maine, New Jersey and Washington give intestacy standing (equal to that of a spouse) to both surviving heterosexual and homosexual partners, but only if the couple has signed up for a state partners registry. (Don't be lulled by the registries offered by some cities: They give partners the right to workplace benefits, but not, in most cases, inheritance rights.) In addition, in those states that still recognize "common law marriage", a long-standing heterosexual partner might be able to claim the spouse's share of your estate, but it could mean a lot of lawyers' fees.

What if you die intestate leaving no spouse (common law or otherwise) and no kids? Your parents and siblings are usually next in line to inherit. In nine states the parents of your late spouse are in line, too, albeit toward the rear. In Colorado a natural parent who gave you away for adoption can be an intestacy heir.

So don't put it off. Get a will written and sign it. "We have some clients with very well-traveled, unsigned wills," laments Timothy Speiss, a CPA in charge of Eisner LLP's wealth advisory group in New York.