

How Are Estates Distributed If There's No Will? A Lawyer Explains Intestate



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Nov 7, 2023

Many Americans neglect estate planning, particularly where setting up a will is concerned. According to one recent Gallup poll, [only 46% of adults](#) in the US have a valid will. If you fall into that category, there is a process the state will carry out when you die to distribute your assets, but it isn't very straightforward.

Read on to find out what happens to your estate when you don't leave a will. Learn about the intestacy process and how it works, and find out how to avoid probate with proper estate planning.

Key Takeaways

- When you die without a valid will, your estate is passed on through the intestacy process.
- The intestacy process is when a probate court assigns a representative to value your estate, settle liabilities, and distribute the remaining assets.
- You can avoid the probate process by setting up a value will or creating a trust to pass on assets within your estate.

What Happens to an Estate If There's No Will?



We all toss and turn at night wondering what'll happen to loved ones after we're gone, and that's why estate planning is so important. It gives you peace of mind that the generational wealth you've accumulated can be passed on to help the people you love long into the future.

When a person dies with a will, their assets are distributed to loved ones as per the decedent's wishes. But if a person dies without a valid will, their estate is distributed through a process called "[intestacy](#)."

When a person dies "intestate," it means a state probate court will need to decide how to distribute the decedent's assets.

The intestacy laws of the state where the person lives determine [who gets to inherit the property](#) of the deceased person, and the laws in each state work pretty similarly in practice. Where they tend to vary is in how they define "heirs" and the proportion of the deceased person's estate that each heir receives.

[Nancy Gunnard](#), Of Counsel at the Massachusetts-based law firm [Mirick O'Connell](#) explains:

"Under intestacy laws of most states, heirs include surviving spouse, children, parents, and siblings.

There are various factors that determine the heirs and distribution of property under the intestacy laws including marital status and whether the decedent has surviving children, parents, and siblings."

But the estate's heirs — and the proportion of a decedent's intestate estate those heirs ultimately receive — is decided through a court proceeding.

How Does the Intestacy Process Work?

The intestacy process starts when an individual dies without a valid will. After the decedent passes, his or her estate will normally [go through probate](#) if they owned property in their name alone.

Probate is a court-supervised legal process for settling an estate, paying creditors, and transferring the intestate estate assets. Most states have a simplified and informal probate process if the intestate estate meets certain criteria. For example, assets might qualify as a "[small estate](#)," meaning the value of the estate doesn't exceed a specified amount.

"When an intestate estate is probated, [the court appoints a personal representative](#), determines heirs, and oversees the probate process. When appointing the personal representative, the court looks to the decedent's closest relatives," Gunnard says.

Once appointed, the personal representative has the legal authority to administer the estate, and they're also tasked with three key responsibilities. They need to:

- Identify, collect, manage, and value the assets of the estate
- Decide and settle the debt and [tax liabilities of the estate](#)
- Transfer any remaining assets to the estate's heirs

Gunnard explains:

"In carrying out his or her responsibilities, the personal representative may have to make decisions about which assets to keep and which assets to sell, and may be responsible for selling assets such as real property or vehicles.

After satisfying any tax liability and creditors' claims from the assets of the estate, the personal representative transfers the remaining assets of the intestate estate to the heirs."

In most states, the transfer of assets to an heir follows a hierarchy that starts with a surviving spouse. If the person was unmarried when they died, assets normally get divided between surviving children or grandchildren before other relatives are taken into consideration.

If the personal representative of the court can find no [next of kin](#), the intestate estate will normally pass into the ownership of the state. This process is called "escheatment."

What Types of Assets Can Be Passed on Through Intestacy?



Generally speaking, an intestate estate includes all of the decedent's personal property. Intestate estates will typically include assets like:

- Real estate
- Vehicles
- Bank accounts
- Investment accounts
- Jewelry

Any assets of this nature can be awarded to designated heirs through the intestacy process.

It's important to note there are a few key exceptions to this rule. There are some asset classes that can't be passed on to heirs through a probate court. This includes:

- Property that's held jointly with a [right of survivorship](#) (like a house that's owned as joint tenants or tenants by the entirety)
- Jointly owned bank accounts
- Jointly owned investment accounts
- Jointly owned securities
- The proceeds from an IRA, 401(k), or other retirement accounts with a named beneficiary
- Life insurance benefits where the policy already has a named beneficiary
- Property or accounts that have a payable-on-death designation

But the most notable exception you have to bear in mind is property held in trust can't be included in an intestate estate. That means if you set up a trust before you die, you're able to specify who receives which assets, even if you don't have a will.

What Can You Avoid Intestacy Through Estate Planning?



Gunnard explains:

“If you fail to create a will, state intestacy laws provide one for you.

While heirs under intestacy laws include the closest relatives, unfortunately, distribution of the decedent's estate is determined by state intestacy laws and does not always match the decedents' intentions. For example, an estranged or irresponsible child may inherit under the intestacy laws, even if you do not intend for him/her to inherit anything.”

That's where estate planning can help you ensure that your wealth is passed on to the people you choose and used in the way you see fit. It's also worth planning for the future to spare your loved ones the probate process.

Probate is a long and costly process. It's also public, which means anybody can see who inherited your property and what was included in your estate.

Why Set Up a Will?

According to Gunnard, the easiest and most affordable way to ensure your wishes are met is to set up a valid will.

“A will is a relatively simple and inexpensive way for you to determine who will inherit your property. In addition, [a will allows you to name the personal representative of your estate](#) and name guardians for minor children.

Another advantage of having a will is that you can specify how certain property will be handled. More importantly, a will may avoid family disputes. For example, if you think your kids will fight over who gets the Picasso hanging in your living room, you can direct that it be sold and the proceeds divided equally among the children.”

If the will and state law allow, you can even leave a memorandum ensuring you can change your wishes at any time by revising or replacing the memorandum. Just bear in mind that a memorandum isn't legally binding on the personal representative, it simply provides guidance.

Why Set Up a Trust?

Another popular alternative when planning to pass on generational wealth is to create a trust.

[A trust is a flexible estate planning tool](#) that lets you determine who will inherit your property and avoid probate. Depending on the size of the estate and the type of trust, it can avoid estate taxes.

A trust allows you to put conditions on how and when your property is distributed, such as specifying when and for what reason trust assets can be distributed. For example, if you have a beneficiary who is a minor, you can specify that assets can only be used for college or a downpayment for a house.

You can even specify the age (or ages) when a beneficiary is allowed to receive a distribution.

Gunnard notes:

“Another advantage to having a trust is that property in a trust passes to beneficiaries without going through probate, making it easier to distribute the trust assets to the beneficiaries.

[Trusts are private documents](#) and do not need to be filed. Which means your nosy neighbor will never know that Picasso hanging on your living room wall was a priceless original.”

Regardless of which route you choose, proper estate planning requires organization, collaboration, and security. That's why partnering with a Family Operating System® like [Trustworthy](#) is essential.

Using Trustworthy, you're able to upload and create digital copies of trust documents, wills, relationship verification documents, and everything in between to ensure your records are always accurate and up-to-date no matter what happens.

You can then share access to those essential documents with your attorney, members of your family, and your financial planner. This ensures everybody knows your express wishes and can produce that documentation when required after you pass away.

It saves your loved ones a lot of time, energy, and heartache — while also giving you peace of mind that the decisions you make in life can (and will) be respected long after you're gone.

So, are you ready to get organized for the future? [Explore the benefits of Trustworthy now.](#)

Frequently Asked Questions

What Happens if You Don't Have a Will?

If you die without a valid will, your estate enters the “intestacy” process. That means a probate court will decide how to distribute your assets.

Does an Estate Have to be Divided Equally?

No. You can distribute your assets however you see fit by establishing a valid will or a trust. Likewise, if you die intestate, a probate court may decide not to distribute your estate to heirs equally.

What is the Legal Order of Next of Kin?

Next-of-kin rules vary by state. But generally speaking, most states will prioritize a surviving spouse before moving on to children, parents and then siblings.