



---

## When Someone Dies Without a Will

*Where do things proceed from that point?*

Provided by Chris Eller

Every day, people die intestate. In legalese, that means without a will. This opens the door for the courts to decide what happens with their estates.

**When no valid will exists, state intestacy laws dictate how assets are distributed.** These laws divide an estate evenly (or equitably) among heirs. Any assets held in joint tenancy go to the joint owner. Assets held in a trust transfer to the trust beneficiaries (with spouses getting a share of those assets in some states). Community property goes to a spouse or partner in community property states.<sup>1</sup>

Simple, right? Unfortunately, the way assets transfer under these laws may not correspond to the wishes of the deceased person. Did the decedent want some of his or her estate to go to a charity or a person close to them? These laws will not allow that. State law will also decide who the executor of the estate is, since the decedent never named one.<sup>2</sup>

If the deceased person designated beneficiaries for his or her retirement accounts and life insurance policy, those retirement accounts and insurance proceeds should transfer to those beneficiaries without dispute, even when no will exists. When life insurance policies and retirement accounts lack designated beneficiaries, then those assets are lumped into the decedent's estate and subject to intestacy laws.<sup>2</sup>

Most people have specific ideas about who should inherit what from their estates. To articulate those ideas, they should write a will – or better yet, they should draft one with the help of an attorney. Anyone who cares about the destiny of his or her wealth should take this basic estate planning step.

**For a last will & testament to be valid, it must meet three important tests.** It must be created by a person of sound mind. It must express that person's free will – that is, it cannot be written or drafted under coercion or duress. Lastly, it must be signed and dated in the presence of two or more unrelated people who stand to inherit nothing from that person's estate.<sup>1</sup>

Many wills are signed in the presence of notaries; although, a will does not have to be notarized to be legally valid. Some wills are self-proving – they have an attached, notarized affidavit, which acknowledges that all three tests noted in the preceding paragraph have been met. When this affidavit accompanies a will, there is no need to track down the parties who witnessed the signing and dating of the document years before.<sup>1</sup>

A last will and testament should be formatted and printed using a computer and printer; at the very least, it should be typed. Handwritten wills may not pass muster in some probate courts.<sup>1</sup>

When an individual dies intestate, the future of his or her estate is largely up to the courts. A basic, valid will stating his or her wishes may prevent that fate.

**Chris may be reached at 815-539-3437 or [chris.eller@investmentcenters.com](mailto:chris.eller@investmentcenters.com) | [www.chris-eller.com](http://www.chris-eller.com)**

### Citations.

1 - [legalzoom.com/knowledge/last-will/topic/wills-intestate](http://legalzoom.com/knowledge/last-will/topic/wills-intestate) [3/20/17]

2 - [money.cnn.com/2016/04/28/pf/dying-without-a-will-prince/](http://money.cnn.com/2016/04/28/pf/dying-without-a-will-prince/) [4/28/16]

---

This material was prepared by MarketingPro, Inc., and does not necessarily represent the views of the presenting party, nor their affiliates. This information has been derived from sources believed to be accurate. Please note - investing involves risk, and past performance is no guarantee of future results. The publisher is not engaged in rendering legal, accounting or other professional services. If assistance is needed, the reader is advised to engage the services of a competent professional. This information should not be construed as investment, tax or legal advice and may not be relied on for the purpose of avoiding any Federal tax penalty. This is neither a solicitation nor recommendation to purchase or sell any investment or insurance product or service, and should not be relied upon as such. All indices are unmanaged and are not illustrative of any particular investment.

Investment Centers of America, Inc. (ICA) member FINRA, SIPC and a Registered Investment Advisor is not affiliated with First State Bank or Chris Eller First State Investment Services. Securities, advisory services and insurance products offered through ICA and affiliated agencies are **\*not insured by the FDIC or any other Federal Government agency \*not a deposit or other obligation of, or guaranteed by any bank or their affiliates \*subject to risks including the possible loss of principal amount invested.** ICA does not provide tax or legal advice.