

### Contacts

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There are many problems that can arise as a result of not having a will. The following are examples of problems of not having a will:

A family member will need to apply for administration, which increases the cost to the estate because the administrator will have to pay the premium on a surety bond. The premium is based on the size of the estate.

The beneficiaries will be determined by statute as opposed to going to the people who you would want. The following are examples of what would happen by statute if you did not have a will:

You are survived by your spouse and parent(s), but no children: Your spouse gets the first 25 percent (but not less than \$50,000 nor more than \$200,000), plus 75 percent of the balance of your estate. Your parents get the remaining estate assets.

You are survived by your spouse and children, all of whom are also children of your spouse (and spouse has no other children by any other relationship): Your spouse receives 100 percent of your estate.

You are survived by your spouse and children, some of whom are not children of your spouse: Your spouse gets the first 25 percent (but not less than \$50,000 nor more than \$200,000), plus 50 percent of the balance of your estate. Your children get the remaining estate assets.

You are survived by your spouse and step-children (children of spouse who are not your children): Your spouse gets the first 25% (but not less than \$50,000 nor more than \$200,000), plus 50 percent of the balance of your estate. Your more remote heirs (siblings, nieces, nephews, etc.) get the remaining estate assets. Your step-children receive nothing.

You are survived by children of your deceased spouse (step-children), but no descendants, parents, descendants of parents or grandparents: Your step children get 100 percent of your estate.

Regardless of your age or your wealth, it is very important to prepare a will. The benefits to having a will are:

You can protect minors or disabled children through the creation of trusts, otherwise your children or grandchildren will get their entire share at age 18. Most people will put the money in trust until the child is 21, 25 or even older, depending on the child. The trustee will be able to use the money for your child or grandchild until they reach the age you choose to pay for their health, welfare, education, etc. A trust can also be set up for a disabled family member so that they do not lose their governmental benefits.

You can select an executor and provide that he or she can serve without a bond. You can also select guardians for your underage children and trustees who will be responsible for handling the trusts set up in the will.

You can select your beneficiaries, and you can also make a charitable organization a beneficiary.

You can update your old will. If you have an old will that was done prior to 1980, you should take a look at it, because it probably needs to be updated. In 1980, the legislature allowed self-proving wills, which means if you have two witnesses and a notary sign your will, you do not need to find the witnesses and bring them to the surrogate's office to testify to the authenticity of your will. If your will

was done prior to 1980, most likely it was only witnessed by two people and not notarized, and in that event the executor would need to find one of the witnesses to bring to the surrogate's office in order to probate the will. If a witness cannot be found, then you need someone to authenticate both witnesses' signatures, and if that cannot be done, your executor will need to hire an attorney to go to court to request that your will be probated, which will cost several thousand dollars. In addition, your old will may have provisions that no longer apply, such as naming guardians for your children that are now over 18, or you may want to provide for grandchildren that were not alive at the time you made your last will. You may have also selected executor, trustee, or guardian that is no longer living or available.

Tax planning is another benefit to having a will.