

DO I REALLY NEED A WILL?

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This is a question asked too often. It has been said that “while well-planned estates may all be alike in the happiness they bring to families, a poorly planned estate can bring unhappiness in countless ways.” Individuals that die without a Last Will and Testament (“Will”) fail to grasp how the Florida Probate process will control who administers their estate, the beneficiaries and the shares they will receive.

Personal Representative | Administrator:

One of the main purposes of having a Will is to nominate the individual or entity that you desire to serve as the Personal Representative of your estate. So long as they meet the statutory requirements (Florida resident, family member, etc...) they will be appointed to serve by the Court. However, if you die without a Will the Court will determine who will serve in that capacity. It will first look to a surviving spouse, then the person selected by a majority in interest of the heirs and then the heir nearest in degree. This could result in some distant family member.

Inheritance:

Equally, if not more important, is to whom you want your estate to pass at death. If you are married, with or without adult children, and die without a Will then your entire estate will pass to your surviving spouse. This will occur regardless of the length of the marriage and whether you are separated or have filed for divorce from them. If you are married, with a child and your surviving spouse also has a child from a prior relationship, and die without a Will then one-half (1/2) of the entire estate will pass to your surviving spouse.

Alternatively, if you die without a surviving spouse, your estate will pass in equal shares to your children. If you have no children, then in equal shares to your parents, if alive. If none survive you then to your siblings and their heirs.

Homestead Real Property:

Without a Will, your Homestead real property (personal residence) will pass outright to your surviving spouse, if you have no living children. If you have children your spouse will only be entitled to either a “life estate” or undivided one-half (1/2) interest in the property. If you do not have a surviving spouse it will pass to your children and their heirs.

Minor and/or Special Needs Child:

The situation will become more complex if you die survived only by a minor or special needs child. A Will would allow you to select the individual(s) to take custody of them and control the amount they receive in inheritance. Without a Will, that decision will be solely up to the Court to decide. This can result in family disagreements about who should serve and control the inheritance. An outright inheritance may also result in the special needs child losing eligibility for government benefits.

Conclusion:

The cost associated with proper planning far outweighs the costs of failing to plan. Plan today as no one knows what the future holds.