

Good Reasons to Make a Will- and What Happens When You Don't

GOOD REASONS FOR A WILL

Benjamin Franklin's commentary has held the test of time: "In this world nothing can be said to be certain, except death and taxes." And in most states, death (with or without a will) can affect one's taxes. While we all know that death is inevitable. Many of us delay doing this necessary work because it seems depressing, or lugubrious, or that somehow it will hasten death. Actually, having one's affairs in order is more likely to be comforting than discomfiting, and it is a final gift that makes a huge difference in your family.

The first, best reason to have a will, and to keep it up to date, is to ensure that your family members are cared for in the way that you wish. If you die intestate, the state of Pennsylvania will distribute your estate among particular survivors using a particular formula. (See below.) The "state won't get it all" but you may leave your spouse or other heirs in a precarious or reduced place without realizing it or meaning to.

Now, consider the emotional impact on surviving family members. There is SO much to attend to after the death of a loved one—funeral arrangements; sorting out all the financial issues with banks, credit cards, and such; disposing of clothing; figuring out what to do with a second car and getting it titled so that it can be disposed; and on and on. This time is upsetting, confusing, busy, and exhausting enough, and not have the guidance of a will adds to the burden. Dying intestate means that your family will be scrambling to deal with the estate with no specific guidance from you. Verbal wishes may help, but unless those wishes are committed to paper and authorized in some way, there is more room for confusion squabbling, and legal challenge. Of course, a will doesn't obviate challenges, hurt feelings, or previous assumptions, but it's more clear and it has legal standing.

But misunderstandings and hurt feelings are not the only things to consider. For whatever reason, we sometimes wish to exclude specific relatives. Dying intestate may mean that those whom you wished to disinherit receive a share anyway.

You may also need to have a trust established for an infirm spouse or dependent child. If, for example, your spouse is in a memory care residence and you die first, you must have some mechanism for protecting and providing for that spouse. This can be accomplished through a trust clause in your will, in which you designate the trustee.

Next, a will made up by an authorized attorney leaves a legal document that is more secure than an instrument downloaded from the internet and completed on your own. The DIY version is less expensive, but it's also more open to challenge, and it may not cover everything you want it to. If, for example, you want something held in trust, a DIY instrument may not be as trustworthy as you require. At any rate, having an attorney review and check a DIY will may be a good idea.

Consider also your desires to leave bequests to charities or other entities. Assets are divided only among family members, if there are any, but not to your church, synagogue, alma mater, or even to care for pets, if there is no will.

PA'S INHERITANCE FORMULAS WHEN THERE IS NO WILL

First, the caveat: this information has been pulled from looks like a reliable website, but you are best advised to seek your own attorney. It can get complicated. Note that grandchildren are not included, those nieces, nephews, aunts, uncles, and grandparents may be.

Inheritance Situation For the Immediate Family

- If a surviving spouse, but no children: Entire estate to the spouse
- If children, but no spouse: Entire estate split evenly among surviving children (that is, no portion goes to the children of a deceased child)
- If spouse and children from only that marriage: First \$30,000 of estate to spouse, plus $\frac{1}{2}$ of the remaining estate/ the other $\frac{1}{2}$ split evenly among the children
- If spouse and children from that marriage, plus children from a different relationship: $\frac{1}{2}$ of estate to spouse/ $\frac{1}{2}$ split among all children
- If spouse and parents: $\frac{1}{2}$ of estate to spouse and $\frac{1}{2}$ to parents.

For example, you have a \$1,000,000 estate and

You have a wife and four children from that marriage. Your wife inherits \$30,000, plus half the remaining estate of \$970,000, which is \$485,000, for a total of \$515,000. The four children each receive $\frac{1}{4}$ of \$485,000, for a total of \$121,250 each.

OR

You leave a husband, two children from that marriage, and three children from a previous marriage. Your husband inherits half of the \$1,000,000 for a total of \$500,000 and the five children receive $\frac{1}{5}$ of the other half, for \$100,000 each.

OR

You are not legally married and have two children with your life partner. Your partner inherits nothing, and the children inherit \$500,000 each. (If you DO have a will leaving your estate to your unmarried partner, he or she pays a whopping 15% in taxes on just about all of it.)

Inheritance Situation for Extended Family

If you are widowed or single and have no surviving children, then die intestate, the state will attempt to find other extended family members and divide the estate among them. This approach is layered; that is, each inheritance situation is based on no family members from the preceding situation.

- If surviving parents, but no spouse or children: Entire estate to parents
- If no surviving parents or children: Estate split evenly among siblings
- If no surviving siblings: Estate split evenly among nieces and nephews

- If no surviving nieces or nephews: Estate split evenly among paternal/maternal grandparents
- If no grandparents: Estate split evenly among paternal/maternal aunts and uncles
- If no aunts or uncles: Estate split evenly among cousins.

If NONE of these stipulations apply to you, the state of Pennsylvania will inherit your estate. But as you can see, the state does try to keep your estate in the hands of your family, except for grandchildren.

NON-PROBATE PENNSYLVANIA INHERITANCES

In addition to having an up-to-date will, it is equally important to designations are in place. If any of these other instruments are to go to a beneficiary for whom some controls are required, the beneficiary would be the trust, rather than the individual. You would establish a trust clause in your will and name the trustee.

There are certain assets and accounts of the decedent that the PA probate court would not handle, as there has already been a beneficiary named for the following:

- Living trust assets
- Insurance policies
- Pay-on-death bank accounts
- Retirement accounts
- Insurance payouts for estates
- Certain funds in a bank account for final expenses