

What Happens If You Die Without A Will?

Frequently Asked Questions



Rebecca E. P. Wade
rwade@meyercafel.com

MEYER CAPEL
A Professional Corporation
306 West Church Street
Champaign, IL 61820
Phone: 217-352-1800
Facsimile: 217-352-1083

Your Property

How Your Property Passes At Your Death Depends On How You Own Your Property

Regardless of whether you have a Will, the form of ownership of each of your assets determines how each asset will pass at your death. There are several forms of property ownership and each form of ownership dictates a different disposition of that property at your death. **Co-Owned Property** is any property you own in a joint form of ownership, such as joint tenancy with rights of survivorship or tenancy in common ownership. Property owned in joint tenancy with rights of survivorship or tenancy by the entirety will automatically pass to the surviving joint owner at your death; in contrast, any share of property that you own in tenancy in common ownership will pass under your Will at your death, or if you die without a Will, the state laws of “intestacy” will dictate how this property will be distributed. **Beneficiary Designation Property** is any asset that has a beneficiary designation (such as life insurance policies and retirement assets). This type of property passes directly to your designated beneficiary or beneficiaries at your death. It is also possible to own property in trust, by creating a trust during your lifetime and making that trust the owner of your various assets; at your death, all **Trust Property** passes to whomever you designate in your trust, and finally, there is **Sole Property**, which is any property that does not have a beneficiary designation and is owned in your individual or sole name. Your **Sole Property** passes under your Will, or if you die without a Will, your Sole Property passes by intestacy.

Who Receives Your Property If You Die Without a Will?

If you die without a Will, your Sole Property and Tenants in Common Property will be distributed according to the State of Illinois laws of intestacy. The laws of intestacy are rigidly applied to all families regardless of their special needs and circumstances. In Illinois, the laws of intestacy provide that your property will pass as follows:

If you have a spouse, your spouse receives 100% of your property if you have no children or 50% of your property if you have children, with your children receiving the other 50% (or their descendants if a child has predeceased you).

If you do not have a spouse, your property passes in the following order to: (1) your children (or their descendants), (2) your parents and siblings (or their descendants), (3) your grandparents (or their descendants), (4) your great-grandparents (or their descendants), (5) your nearest kindred as defined under Illinois law, and (5) the State of Illinois.

What Happens If You Die Without A Will?

Frequently Asked Questions



Rebecca E. P. Wade
rwade@meyercafel.com

Your Children

What Happens to Your Children and Their Assets If You Die Without A Will?

If you do not designate a guardian in your Will to take custody of your minor children and to manage their assets, Illinois law provides that anyone who is (1) 18 years old, (2) a resident of the U.S., (3) of sound mind, (4) not disabled, and (5) not a felon may petition the court and request appointment as guardian of your children and their assets. If the court finds the petitioner capable and qualified and also determines that it would be in the best interests of the children for the petitioner to assume guardianship, the petitioner will be appointed guardian. Your children will not only need a **Guardian of the Person** who will have physical and legal custody of your children but they may also need a **Guardian of the Estate** who will manage their assets. A minor needs a guardian of his or her estate if the minor has or will inherit assets with a value of at least \$10,000. If the only asset the minor is to receive is the right to collect social security benefits, then a Guardian of the Estate is not required. One person may be appointed as guardian of the estate and another as guardian of the person, but often times, the same person is appointed as both the guardian of the person and the estate.

Legal Advice

How Can An Attorney Help You?

An attorney experienced in estate planning can assist you in ensuring that you have a valid Will which is prepared and executed in accordance with state law. An attorney skilled in estate planning can also assist you in choosing the right guardian to care for your minor children and to manage any assets owned by your minor children, as well as assist you in selecting an appropriate Executor to administer your Will and manage your assets following your death. An attorney concentrating in estate planning can also assist you in creating a trust or trusts to hold assets for the benefit of your minor children and help you in selecting a trustee to ensure that those assets will be utilized prudently on behalf of your children.

NOTICE: This brochure is based on Illinois law and is intended to be informative not advisory and is not intended to be applied to any particular facts or to serve as legal advice and does not create or constitute an attorney client relationship. You should not act upon any information contained herein without seeking qualified legal counsel on your specific matter. The law changes frequently, and the author is not responsible for any errors, omissions, or any consequences of any reliance on this information.