

What really happens if I die without a will?

Jimi Hendrix died without a will in 1970. A battle over his estate raged for more than 30 years. Perhaps the courts overseeing the estates of Prince and, just recently, Aretha Franklin, will bring resolution in a shorter period of time. But if history is any guide, the process is likely to be acrimonious—to say the least.

"If you die without a will, there is a high probability that your immediate and extended family will fight over your assets," says Richard A. Gotterer, CFP[®], Director and Senior Wealth Advisor at Calamos Wealth Management. "And if there is any wealth to be had, lawyers are the ones who will end up winning."

That bleak assessment is borne out in Prince's case. Would he have wanted a parade of claimants and the accompanying paternity tests? Or the release of music that, in life, he had chosen to keep under wraps? Unfortunately, both are necessary parts of the process now. In the absence of a will, the court must follow state-specific guidelines in distributing assets—and those rules cannot account for which relatives he was close to...or even knew.

The court-appointed executors of Prince's estate have a fiduciary responsibility to maximize the estate's value – hence the publishing of those unreleased recordings. In the absence of instructions, the court and executors cannot speculate on Prince's wishes. They are bound by the state-specific rules that govern the estates of those who "die intestate."

If you were to die intestate, without a will, here's what you can expect to happen:

- Someone in your family or, technically, any interested party, will file a court action called probate and petition the court to be named personal representative or executor (the terms vary among states).
- From that point forward, everything about the court process will be public—all the details of your assets and all the details of their distribution, your debts and other private financial affairs. If you have wealth or any level of notoriety, that lack of privacy can be extremely painful for your loved ones.
- During the probate process, your assets will be temporarily illiquid. If your family needs money for burial, medical, and other end-of-life expenses, those funds will be unavailable from any accounts in your name only, unless those accounts are specifically designated to transfer on death. Gotterer says, "I worked with a client whose aunt passed away without a will, and the surviving family had to borrow money from a third party to pay for the funeral. Even if she had tens of thousands of dollars in a bank account, those funds wouldn't have been available to the family."

- Your assets will be distributed according to your state’s “intestate succession” rules, which typically direct assets to spouses and children first, but in the event there are none, the guidelines may direct assets upward to parents, sideways to siblings, or down to nieces and nephews. In all cases, there is no consideration for the nature of your relationship with any individual. And there may be no accommodation for unmarried partners as not all states recognize domestic partnerships. The result is often a perception of unfairness that can leave people bitter and divided.
- Your pets may not find the home you would hope for them. Sometimes even among animal lovers, pets become tied up in larger estate contentions that prevent a peaceful resolution of their ownership. No family member may want or be able to take care of a cherished pet. A court might order a pet to be surrendered to a shelter.
- Any undocumented loans you may have made, such as to family or friends, may go unresolved. This, too, can lead to strife among heirs, to the extent family members are aware of such arrangements.
- Your portable assets may disappear. It’s common for jewelry and other sentimental valuables to simply disappear before they are cataloged and distributed by the court. Again—bitterness and division.
- Any preferences you may have had about your business, real estate, or any other asset will have no bearing on the asset’s disposition.

Gotterer says, “The death of a loved one is usually a period of intense grieving. The last thing the family needs is to find out there’s no will, no access to money, and no proper distribution of the family’s wealth. Dying without a will creates a series of conflicts that can be easily avoided.”

Only 42% of U.S. adults currently have an estate plan in place. That’s a lot of loved ones who stand to experience unnecessary turmoil and emotional pain. Sixty-four percent of Generation X (ages 37-52) have no will. Not surprisingly, the figure for Millennials is even higher, at 78%¹!

In some states, Gotterer notes, avoiding these problems might be as simple as a handwritten will, signed and dated on a cocktail napkin—though he highly recommends working with a board-certified attorney to ensure the documents are done right.

Consider adding trust provisions to your will, or establishing separate trust documents, both to help fulfill your specific wishes and to give your heirs privacy. And once you have an estate plan in place, be sure to review it periodically. By doing so, you can ensure your wishes are carried out while also reducing emotional and potentially financial stress for your heirs.

¹Source: <https://www.caring.com/articles/wills-survey-2017>

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