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Intestacy





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What is intestacy?

You are said to have died intestate if you die without a valid will. Intestacy laws govern the property distribution of someone who dies intestate. Each of the 50 states has adopted intestate succession laws that spell out how this distribution is to occur, and although each state's laws vary, there are some common general principles. The laws are designed to transfer legal ownership of property you own or control to the people the state considers your heirs. These laws also control how these individuals are to receive this property and when the property is distributed.

Partial intestacy can occur if a will does not dispose of all of your property or if a clause in an otherwise valid will is found to be invalid.

Example(s): Frank is a resident of Massachusetts and is married with two minor children. He keeps meaning to write his will but hasn't gotten around to it yet. One day, Frank gets hit by a truck while crossing the street and dies instantly. Because he has no will, the intestate succession laws of Massachusetts govern how his property is distributed. Under Massachusetts law, 50 percent of Frank's property passes to his wife, and 50 percent passes to Frank's two minor children (25 percent each). Had Frank had a will, he would have left everything to his wife.

Technical Note: Real property is distributed under the intestacy laws of the state in which it is located. Personal property is distributed under the intestacy laws of the state in which you are domiciled at the time of your death.

Why people die intestate

Believe it or not, close to 60 percent of Americans die intestate (Source: FindLaw.com). Why? For many reasons, including the following:

Procrastination

Like Frank in the above example, people put off making out their will. No one plans to die. There is always tomorrow, right? Well, you may be wrong.

Fear

Of course, no one likes to contemplate his or her own death. Some people don't want to think about it or discuss it with their loved ones, so they don't.

Ignorance

Most people believe that their property will automatically pass to their spouse. However, under most intestacy laws, this is not true. Some states split your property among your spouse and children (your spouse may get as little as one-third). Other states give your spouse only a life estate in your property. Often, people just aren't aware of the intestacy laws in their state and how they may affect their family.

Indifference

Then there are those who just don't care what happens once they're gone.

Why should you avoid intestacy?

Can be costly

Intestacy can be more costly than drafting and probating a will. In most states, an administrator must furnish a bond (you can often waive this requirement in your will). Also, an administrator's powers are limited, and he or she must get permission from the court to do many things. The cost of these proceedings is paid by your estate.



You can't decide who gets your property

State intestacy laws will determine who receives your property. These laws divide up your property among your heirs, and if you have no heirs, the state itself will claim your property.

Unlike beneficiaries under your will who can be anyone to whom you wish to leave property, heirs are defined as your legal spouse and specific relatives in your family. The state considers these people to be your loved ones, whether you actually loved them or not. Your heirs will take priority over anyone else in receiving a portion of your estate. If the state can find no heirs, it could claim the property for itself (the property escheats to the state). The laws of your state determine the order in which heirs will receive your property, the percentage that each will receive, and in what form they will receive it, whether in cash, property, lump sum, annuity, or other form.

Special needs are not met

State intestacy laws are inflexible. They do not consider special needs of your heirs. For example, minor children will receive their share with no strings attached, whether they are competent to manage it or not. Or, a healthy brother will receive the same as one who has a physical or mental disability.

Heirs may be shortchanged

The predetermined distribution pattern set out by state law can end up giving a larger portion of your estate to an heir than you intended for he or she to have. It may also leave one of your heirs with too little.

Example(s): Sue is married and has two children, ages 28 and 12. The intestate succession laws in her state leave a certain percentage of her estate to her husband, Ken, and divide the rest equally between their children. With a will, she can leave more of her property to Ken so that Ken can meet the expenses of raising their younger child.

You can't decide who administers your estate

If you die intestate, the probate court will name an administrator to manage your estate. You will have no say in who settles your estate.

You have no say in who becomes a guardian for your minor children

A court will appoint personal and property guardians for your minor children. Because you didn't specify otherwise, the court may appoint someone you don't like or you don't want to take care of your children. You will also expose the assets you leave your child to the management skills of someone you may not approve of.

Relations take priority over friends and others

State intestacy laws will distribute your property to family members in a preset pattern. These laws do not take your relationship with your family into account when dividing up your estate. As a result, that brother that you haven't spoken to in 20 years may end up with a portion of your assets that you'd rather he not have.

Example(s): Pat and Matt have been friends for years and own a house together. Each has no will and has made no plans for transferring his property to the other in the event that one of them dies. Unfortunately, Pat dies. Under state intestacy laws, Pat's interest in the house passes to his nearest relation, his brother, Fred, who Matt has not seen in years. Fred and Matt are now co-owners of the house.

Tax planning options are eliminated

Without a will or some other means of disposing of your property, you can't plan to minimize or provide payment of income or estate taxes.

Example(s): Hal and Jane have two children and a gross estate subject to estate taxes of \$2.6 million. If Hal dies without a valid will, Jane and the children will each take one-third of Hal's estate under intestate succession laws of their state. Jane will receive her portion tax-free under the unlimited marital deduction. However, if the children, taken together, receive more than any allowable exclusions, exemptions, and deductions, then estate taxes will be owed. If Hal had a will, he could leave a greater portion to his wife and less to his children in order to minimize estate taxes.



Can bring about family fights

Who gets Grandma's jewelry? Or what about that stamp collection that you began 30 years ago? Distribution by intestacy law provides no answers to specific questions like these. If these questions cannot be resolved peaceably, lawsuits may result or the property in question may end up being sold and the proceeds distributed to the squabbling family.

How is property distributed under intestacy?

The pattern of distribution varies immensely from state to state. You must check with your state to find out what its intestate's will looks like. Generally, the rules are as follows:

- If you leave a spouse, but no children or other issue, the spouse takes the entire estate
- If you leave a spouse and children, each takes a share
- If you leave children and no spouse, the children take the entire estate in equal shares
- If you leave no spouse or children, the entire estate goes to your parents
- If you leave no spouse, children, or parents, the entire estate goes to your siblings (or your siblings' descendants)
- If you leave none of the above, the entire estate goes to your grandparents and their descendants (your aunts, uncles, and cousins)
- If you leave no heirs, the next takers are your deceased spouse's heirs
- If there are no heirs on either side, the next to take are your next of kin, those who are most nearly related to you by blood
- If there are no next of kin, your estate escheats to the state

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