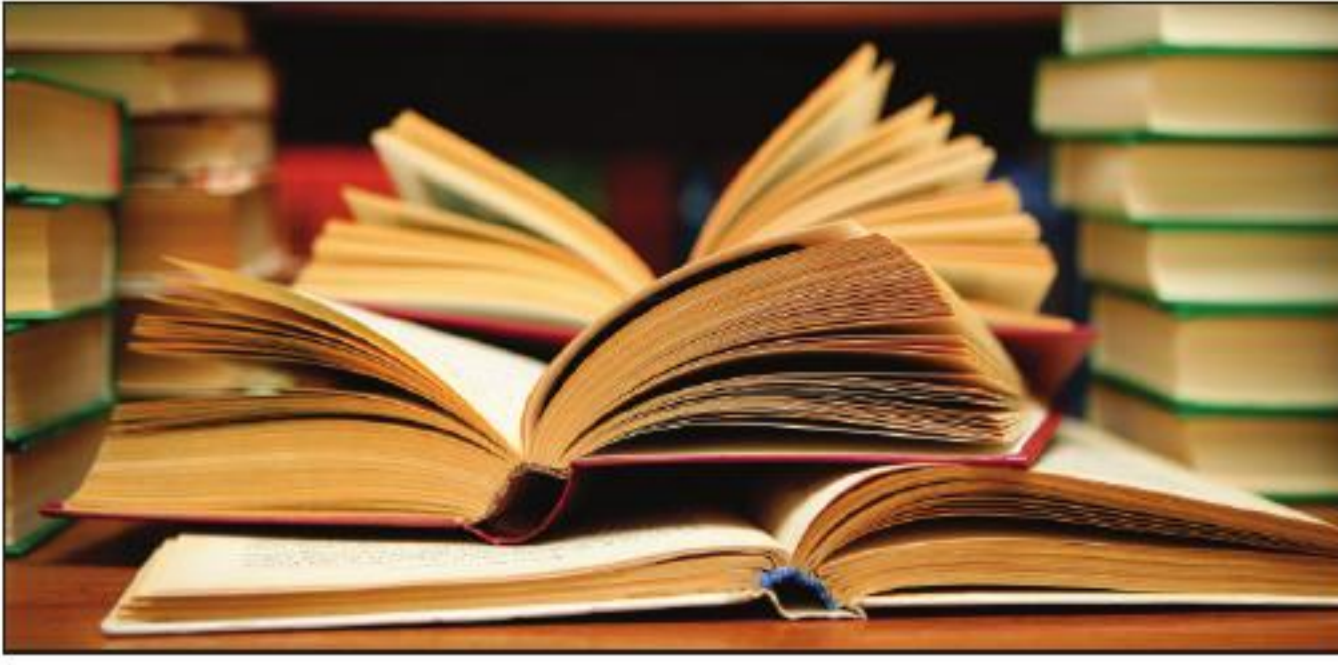


Estate Planning, Wills, Probate, and Transfer of Assets



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Wills and Intestacy

A will allows the testator (the person creating the will) to specify:

- Who receives property at the testator's death.
- Whether beneficiaries receive gifts outright or in trust.
- Who will act as personal representative.
- Who will be the guardian of minor children.

In the absence of a will, these matters are settled by state law.

Who Needs a Will?

- **Include persons who are not heirs.** Wills are needed to provide for a person who is not an heir under state law, such as unmarried partners, stepchildren, friends, charities, and in-laws.
- **Exclude an heir.** Heirs are the persons who inherit an estate under state law in the absence of a will. A will is needed to prevent an heir from inheriting probate assets.
- **Minors and disabled adults.** Trust provisions can be included in a will to delay receipt of an inheritance or to allow assets to be used on behalf of an adult who is disabled.
- **Estate tax planning.** Married couples can include trust provisions to reduce estate tax.

Dying Intestate—Without a Will

State law determines who receives probate property if a decedent dies without a will.

- Most states provide first for the surviving spouse and children. Children of the decedent always inherit a share in some states while in others they inherit only if they are not also children of the surviving spouse. Children also receive a share in some states if the surviving spouse has any children who are not also children of the decedent.

- Intestacy laws generally provide for distribution by representation, also known as per stirpes distribution. The share of any heir who dies before the decedent passes in equal shares to that heir's children.
- When there are no descendants, the surviving spouse receives the entire estate in some states, but commonly shares the estate with the decedent's parents in other states.
- When there is no spouse and no descendants, parents and siblings share the estate in some states. In others, parents inherit the entire estate, and siblings inherit only if there is no surviving parent.
- If there are no parents or descendants of parents, grandparents generally inherit next, followed by their descendants.
- The final beneficiary under intestacy law is the state. Only relations up to a certain degree inherit under each state's laws. After that point, the decedent's property "escheats" to the state. State laws vary, whereas a third cousin thrice removed may inherit in one state, a second cousin may be too remotely related to inherit in another state.

Example: Nola died at age 103 without a will. Under state law, her property passes to her descendants per stirpes. Nola's three children, Brian, Kyle, and Lloyd, all died before Nola. Nola's six grandchildren inherit her \$900,000 estate. Brian's only child receives \$300,000. Kyle's two children each receive \$150,000. Lloyd's three children each receive \$100,000.