

Estate Matters

Think you don't have a will? You do!

The bad news is that seven out of ten Americans don't have any real plan for the distribution of their belongings or the guardianship of their minor children when they die. The good news is that the state has a default "will" to help distribute your property and raise your children – its intestacy laws. Unfortunately, it's not very good. Here is what your "will" provides if you haven't taken the time to properly draft and execute a valid last will and testament.

Your spouse will receive \$15,000, with half of the balance of your estate going to your spouse and half to your minor children. After being appointed as guardian of any minor children, your spouse will be required to account to the Orphans' Court regularly of how, why and where monies were spent for your children's proper care. Further, the spouse will be required to procure a performance bond to guarantee proper judgment in the handling, investing and spending of the children's money, unless proven unnecessary. The children will have the right to review the financial records of their remaining parent pertaining to all financial actions with their money, and when they reach eighteen, will have full rights to withdraw and spend their respective shares of the estate. No one will have any right to question my children's actions on how they decide to spend their respective shares.

Should your spouse survive you, they will have the option of appointing, by will, guardians of your unmarried minor children. In the event your spouse predeceases you or dies while the children are minors, the court will choose for you. If it wishes, the court may appoint anyone who petitions and is claims interest in the welfare of your unmarried minor children. The court may appoint any guardian chosen by your child of fourteen or more.

Your spouse will likely be appointed personal representative, but will be required file a performance bond to guarantee that everything is done properly. Absent prior court approval, no more than \$10,000 may be paid for funeral and burial expenses from your estate. Should your spouse die after remarrying, their new spouse will be entitled to take half of everything (or a third if there are surviving children of the two), regardless of any intention stated in your spouse's will. Their second spouse shall have the sole right to decide who is to get this share, even to the exclusion of your own children.

Under Federal and state tax laws, there are certain legitimate avenues to lower death taxes. Without a will, you might be directing that your money instead be used for government purposes rather than for the benefit of your spouse and children, a less than desirable outcome.

So how do you avoid these unintended results? Simple – spell it out in a will. While a customized package drafted by an attorney taking into account your unique circumstances is a prudent investment to put your mind at ease, almost any valid and properly executed will is better than no will at all.

Disclaimer: This information is provided for general information only and is not intended as legal opinion or advice, nor a complete discussion of estate planning issues. This refers to Maryland law - your state's provisions may differ. Because each situation is different, you should seek independent legal advice from an attorney for specific information.

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