



Who Gets Your Property if You Die Without a Will?

Some North Carolinians, perhaps overwhelmed by the complexities of estate planning, simply ignore the issue and hope it will go away.

But, unless you develop an estate plan, it is possible that your property will be divided among surviving family members contrary to your wishes. Friends not related to you by blood and charitable organizations will be excluded from the distribution of your property. Why? If you do not have a will, your property will be divided according to state laws.

These laws fall under the North Carolina Intestate Succession Act. When a person dies without making a will, he or she is considered to have died intestate, and the property is divided among the surviving heirs according to the rigid specifications of intestate distribution. These laws do not affect certain kinds of property, such as proceeds of insurance policies with designated beneficiaries and property owned jointly with survivorship rights.

State law controls distribution of both real and personal property. All personal property, wherever it is located, is subject to the North Carolina laws of distribution if the decedent was a resident of this state. Only real property that is located within North Carolina is distributed according to North Carolina law. Real property located outside the state is distributed according to the laws of intestate succession of that state. Laws relating to the distribution of property vary by state and may be different from those of North Carolina.

Do you know how your property will be divided among surviving family members if you die without making a will?

Do you need a will?

This publication will help you answer these two important questions.

North Carolina Laws of Intestate Succession — Dying Without a Will

Because something must be done with your property after your death, the North Carolina legislature has provided a method for distributing it among your heirs. The charts at the end of this publication show how real and personal property is distributed under the North Carolina Intestate Succession Act. Each plan, as shown by the charts, attempts to be equitable in its division of property. However, this may not suit your family's particular needs.

For example, you may want to provide security for your surviving spouse. In North Carolina, if you die without a will and leave behind a spouse and children (or descendants of deceased children), your spouse will take the first \$30,000 in personal property plus one-third the remainder of your net estate. The remaining two-thirds will be divided equally among your children. This division of property between your surviving spouse and children might leave insufficient security for the spouse during his or her remaining life. Rising living costs may rapidly deplete the spouse's share of the estate. There is no guarantee that the children will use or be able to use their share of the estate for the support of the surviving parent.

If both your spouse and you die without wills, your combined assets will be divided equally among the children. But if one of your children suffers from a physi-

NORTH CAROLINA PROPERTY DISTRIBUTION IF YOU DO NOT HAVE A WILL

• IF YOU ARE MARRIED:

Spouse Surviving and No Children or Descendants of Children Surviving

No Parent Surviving

- All real and personal property to Spouse

One or Both Parents Surviving

- First \$50,000 personal property to Spouse
- One-half of all remaining personal property to Spouse
- One-half of all remaining personal property to Parent(s)

Spouse Surviving and Children or Descendants of Children also Surviving

- One Child Or his or her Descendants(s)
- First \$30,000 of personal property to Spouse
- One-half of all remaining personal property to Spouse
- One-half of all remaining personal property to Child or Descendant(s)

Two or More Children or Their Descendants

- First \$30,000 of personal property to Spouse
- One-third of all remaining personal property to Spouse
- Two-thirds of all remaining personal property to Child or Descendant(s)

Please note: The dollar amounts given apply to estates of descendants who died on or after Oct. 1, 1995. For estates of decedents who died before Oct. 1, 1995, divide the dollar amounts in half.

• IF YOU ARE SINGLE OR WIDOWED:

Children or Their Descendants Surviving

- All real and personal property to Children or their Descendants*

Parent(s) Surviving, No Children or Descendants

- All real and personal property to Parent(s)

Brother(s) or Sister(s) Surviving, No Children or Descendants or Parents(s)

- All real and personal property to Brother(s) and Sister(s) or Their Descendants*

No Children or Their Descendants, No Parents, No Brothers or Sisters or Their Descendants

- One-half to Paternal Grandparents, but if not surviving, then to Paternal Uncles, Aunts or Their Descendants**
- One-half to Maternal Grandparents, but if not surviving, then Maternal Uncles, Aunts or Their Descendants**

No Relatives

- If there are no children, parents, grandparents, brothers, sisters, aunts, uncles, and no descendants of any such persons, the estate passes to the state of North Carolina.

**Descendants' share: See North Carolina General Statute Section 29-15(4), 29-16(6) for a complete explanation as to the shares of descendants.*

*** In the event there is a party on one side who can inherit but none on the other side, such side shall take the whole.*

cal or mental disability, he or she may have individual needs, which require special attention in your estate.

Or perhaps you want to preserve the family business for future generations. Again, if both your spouse and you die without wills, all your assets, including the business property, will be divided equally among the children. The child who wants to stay in the family business will now be required to buy out his or her brothers and sisters. Will they be able to agree on a price and method of payment that is considered fair by all concerned? General experience says no.

Or perhaps you want to minimize death taxes. If the combined value of all property owned by you and your spouse exceeds \$5 million (2011 Applicable Exclusion Amount/Exemption) there may be federal estate tax

owed after both of you die. With planning, you and your spouse may pass substantial property to your children or someone else without federal tax liability. For large estates, the division of property under the Intestate Succession Act rarely results in a zero amount federal tax bill.

These are only a few examples of the problems that might arise if you die without a will. These and other problems can be avoided if you decide how your property is to be disposed of after your death. Make some basic decisions as to how you want your property divided among family members, consider whether you have a strong desire to make charitable contributions, then seek out the assistance of an attorney for the drafting of a will, which will give effect to your estate plan.

WHAT MY ATTORNEY SHOULD KNOW

Save time and money by having the necessary information in hand for that first visit to your attorney. The following checklist is a tally of information your attorney will need.

- _____ PERSONAL INFORMATION (family members, names, birth dates, addresses, occupations, social security numbers)
- _____ BANK ACCOUNT (name and location, exact name on accounts, number on each account)
- _____ STOCK AND BONDS (description, years purchased, number, exact name of owner, face value, cost)
- _____ LIFE INSURANCE (company, policy number, amount owned by husband, wife, joint, exact name of owner, insured, beneficiary on policy)
- _____ TRUST (type, location, trustee, who established, exact name of beneficiary, value, owned by whom)
- _____ NOTES, MORTGAGES AND ACCOUNT RECEIVABLES (description, year acquired, value, person who owes you)
- _____ REAL ESTATE (list type of property and acres, location, year acquired, cost, owned by, market value)
- _____ PERSONAL PROPERTY (list livestock, motor vehicles, machinery, crop inventory, home furnishings, jewelry, art, antiques, personal items; describe cost and value and who owns)
- _____ LIENS AGAINST PROPERTY (property mortgage, name of creditor, date due, remaining amount due from husband, wife, jointly)
- _____ MORTGAGES AND OTHER REAL ESTATE DEBTS (description, name of creditor, date due and amount remaining to be paid by husband, wife, monthly, whether insured)
- _____ OTHER PERSONAL LIABILITIES (unsecured notes, insurance loans, notes endorsed, real estate taxes, personal property taxes, state taxes including income and inheritance, federal taxes including income, gifts, etc., unsettled claims, name of creditor, date due, amount remaining to be paid by husband, wife, jointly and which debts are insured by credit life insurance.
- _____ RETIREMENT BENEFITS (pensions, profit sharing, deferred compensation, social security, annual benefits for husband and wife, amount invested, and death benefits)
- _____ OTHER FINANCIAL INFORMATION (income last year, current income, salary, retirement income, annuities, rents, interest, bonuses, dividends, trusts, capital gains, etc.)
- _____ WHERE ARE YOUR SPECIAL PAPERS KEPT? (Make a list and name exact location – husband and wife's will, deeds, insurance policies, stocks and bonds, financial statements, income tax returns for last five years, gift tax returns, contracts, partnerships and corporation agreements, profit sharing plan, divorce decrees, pre- and post-nuptial agreements, employment contract, pension benefits.

List adapted from: *What My Lawyer Should Know* by Neil E. Harl, Attorney at Law and Professor of Economics, Iowa State University

You Have a Choice

A will serves other purposes besides dividing your assets among family members. You may need a will regardless of your economic status. A will lets you name a guardian if you should die leaving minor children behind. It also permits you to name an executor, the person who is responsible for carrying out the will's provisions and settling your estate. A will also allows you to establish trusts and name trustees who will hold and manage your assets for the support and maintenance of others.

A valid last will and testament is a legally enforceable declaration as to how your assets are to be distributed at your death. It is not effective until your death, so it does not restrict your use of the property while you are alive. You can change your will as the need arises.

Even if the North Carolina Intestate Succession Act distributes your property according to your wishes, you have other reasons for making a will.

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The North Carolina Cooperative Extension Service prepared this publication as a public service. It is designed to acquaint you with certain legal issues and concerns. It is not designed as a substitute for legal advice, nor does it tell you everything you may need to know about this subject. Future changes in the law cannot be predicted, and statements in this publication are based solely on the laws in force on the date of publication

If you have specific questions on this issue, seek professional advice. If you need an attorney, you may call the North Carolina Lawyer Referral Service, a non-profit public service project of the North Carolina Bar Association, toll-free: 1.800.662.7660 (Wake County residents call: 828.1054).

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