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What Happens If You Die Without A Will?

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Urban legends abound answering the question of what happens if you die with no will. The most common myth is: the state will take your property! Of course, this is not the case.

Intestacy is defined as the condition of dying without executing a valid will. If a person died owning property as joint tenants with other persons, as a tenancy by the entirety with a spouse, titled in a trust, or with beneficiaries named, that property will pass to the named persons and not according to the intestacy laws.

Florida, like most states, has an intestacy law that describe where your property will go if you die with no will. If you die married, your property will pass to your spouse, unless you have descendants. If you leave a spouse and descendants who are also descendants of your spouse, then your property will still pass to your spouse. However, if you leave a spouse and descendants who are not also descendants of your surviving spouse, then your spouse will receive 50% of your estate and your descendants will share the other 50%. If your spouse also has descendants who are not related to you, those persons will not be included.

If you do not leave a surviving spouse, your estate will pass to your heirs. If you leave descendants, i.e., children and grandchildren, then they will inherit your property. If a descendant predeceases you, his or her children will share that inheritance. For example, if you have 3 children and 1 predeceased you leaving 3 grandchildren, then each of your 2 living children will receive 1/3 of your property and your 3 grandchildren will share the other 1/3. Note that the deceased child's spouse is not an heir.

If you have no descendants, then the following persons will inherit your property in the order given: your parents or the survivor of them, then your siblings and the descendants of deceased siblings, then your

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grandparents, then their descendants, and finally one half each to your paternal great grandparents and maternal great grandparents and their descendants. This last category is often called "laughing heirs" because they have no idea who you are!

There are many blended families with a wide range of relationships. Half siblings inherit half as much as those of the whole blood. Step children are not included. Adopted children are included. Children born out of wedlock are descendants of the mother and of the father if paternity had been established. Spouses of heirs are not included.

In second marriages it is common for the husband and wife to own property jointly. This means that when the first spouse passes away, the survivor owns all of the property. When the second spouse passes away, his or her descendants will inherit the jointly held property, and the descendants of the first spouse to pass away receive nothing.

If no persons are found after going through this list, then your property will escheat to the State of Florida, which may be the genesis of the myth mentioned above.

In many cases, people prefer to distribute their assets in a different manner than under the intestacy law. For example, it is not uncommon to disinherit family members for many reasons. Also, people often leave gifts to nonprofits and to friends or unrelated loved ones, or to the family members mentioned above, but in different proportions. By executing a will you can make sure that your property will end up as you wish instead of under the default provisions of the intestacy law.

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