



# 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.

## Purpose of 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.

### State Intestacy Law Scenarios

Spouse and children*	<ul style="list-style-type: none"> <li>• Children always inherit a share,</li> <li>• Children inherit only if they are not children of the surviving spouse, or</li> <li>• Children receive a share if the surviving spouse has any children who are not also children of the decedent.</li> </ul>
No children	<ul style="list-style-type: none"> <li>• Surviving spouse receives entire estate, or</li> <li>• Surviving spouse shares estate with decedent's parents.</li> </ul>
No spouse and no children	<ul style="list-style-type: none"> <li>• Parents and siblings share the estate,</li> <li>• Parents inherit the entire estate and siblings only inherit if there is no surviving parent, or</li> <li>• If no parents or descendants of parents, grandparents generally inherit next.</li> </ul>

\* Most states provide for these individuals first.

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.

**Per stirpes.** 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.

**Example:** Nola died at age 103 without a will. Under state law, her property passes to her descendants per stirpes. Nola's children, Kyle and Lloyd, both died before Nola. Nola's six grandchildren inherit her \$1 million estate. Kyle's only child receives \$500,000. Lloyd's five children each receive \$100,000.



# Estate Planning, Wills, Probate, and Transfer of Assets

## Property Passing at Death

The disposition of property after death depends on the form of ownership of each asset. Some assets may need to be probated (go through a court process) while others pass automatically to new owners. Property ownership rules vary by state law. Generally:

- **Joint assets.** Joint tenancies and tenancies by the entirety pass to the surviving joint tenant. Bank accounts in joint tenancy only for convenience and not intended to pass the property to the surviving joint tenant may be probate assets in some states.
- **Assets with designated beneficiaries.** Life insurance policies, annuities, IRAs, and similar assets pass to designated beneficiaries if the beneficiaries are alive when the insured or plan owner dies. Pay-on-death (POD) bank accounts and transfer-on-death (TOD) security registrations also pass assets to beneficiaries. TOD deeds (available in some states) allow real property to pass to a beneficiary without probate.
- **Trust assets.** Property passes to beneficiaries specified in the trust document.
- **Life estates and remainders.** Property passes to the remainder owners at the death of the life tenant.

## Probate Assets

Other assets—those that will not pass automatically to new owners at death—are subject to state probate rules. These assets pass to the beneficiaries named in the decedent’s will or, if none, according to state intestacy law.

Probate Assets	Nonprobate Assets
Pass to beneficiaries named in a will or (if none) according to state law.	Pass to new owners without probate.
<ul style="list-style-type: none"><li>• Assets owned solely by decedent.</li><li>• Decedent’s share of assets owned as tenant-in-common.</li><li>• Assets that name the estate as beneficiary.</li><li>• Assets with no designated beneficiary or a predeceased beneficiary.</li><li>• Assets that do not take joint ownership or beneficiaries, such as wages, tax refunds of a single filer, or other refunds.</li></ul>	<ul style="list-style-type: none"><li>• Most joint tenancies.</li><li>• Life insurance, IRAs, retirement plans with living designated beneficiaries.</li><li>• Bank accounts POD to living designated beneficiaries.</li><li>• Stock or real property TOD to living designated beneficiaries.</li><li>• Assets held in trust if the trust instrument provides for distributions at death.</li><li>• Remainder interests.</li></ul>

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## Probate

Probate is the court-monitored process for administering the estate of a decedent. The process includes notifying heirs, submitting and validating the will, collecting the decedent’s assets, paying taxes and creditors, and distributing property to the estate’s beneficiaries. An estate is probated in the decedent’s state of domicile. If the decedent owned real property outside his or her home state, an ancillary probate proceeding in that state may also be required. Probate is required if the decedent’s probate assets are above the state’s threshold (generally \$10,000–\$100,000). When probate is required, nonprobate assets are not included in the proceeding.

## Small Estates—Collection of Personal Property By Affidavit

If the decedent’s probate assets are less than the state threshold, no court proceeding is required. The assets can be collected using an affidavit under state procedures for small estates. Typically, the decedent’s successors (those entitled to property under the will or state law) complete an affidavit following the form specified by state law. The affidavit is given to anyone in possession of decedent’s assets (e.g., banks, brokerages, or DMVs). Ownership of the assets passes directly to successors, who also report any after-death income.

## Wills and Nonprobate Assets

Only probate assets pass according to the terms of a decedent’s will. Nonprobate assets pass to the surviving joint tenant or beneficiary.

***Example:** Betty’s will leaves half her estate to her church and half to her children. In 2023, Betty changed title to her home to joint tenancy with her children. When Betty died, the only probate asset was her car. Her church is entitled to one-half of the value of Betty’s car.*

## Contact Us

There are many events that occur during the year that can affect your tax situation. Preparation of your tax return involves summarizing transactions and events that occurred during the prior year. In most situations, treatment is firmly established at the time the transaction occurs. However, negative tax effects can be avoided by proper planning. Please contact us in advance if you have questions about the tax effects of a transaction or event, including the following:

- Pension or IRA distributions.
- Significant change in income or deductions.
- Job change.
- Marriage.
- Attainment of age 59½ or 73.
- Sale or purchase of a business.
- Sale or purchase of a residence or other real estate.
- Retirement.
- Notice from IRS or other revenue department.
- Divorce or separation.
- Self-employment.
- Charitable contributions of property in excess of \$5,000.