

Why You Need A Will

By: Ashlea Ebeling, Forbes Staff

In a survey last year by PNC Wealth Management, 30% of adults with financial assets of \$500,000 or more admitted they had no will. A Harris Interactive survey of the general population, done for Lawyers.com, found 58% of all adults lack this basic document.

If you die intestate—meaning without a proper will or living trust—your assets will be divvied up according to the law in the state where you live. To see how your estate would be distributed, based on your residence, relatives and net worth, try our intestacy calculator, created by Johnstown, Pa., estate lawyer Kurt R. Nilson. You might be shocked.

Example: Married couples with kids typically write “I love you” wills leaving everything to each other, with the idea that the survivor will take care of the kids. Indeed, since 1991, the National Conference of Commissioners on Uniform State Laws, a group dedicated to rationalizing and harmonizing state laws, has urged states to make this the default for a married person with kids (but no children from a previous marriage) who dies intestate. “A lot of people think their spouse gets everything,” says Nilson. Yet only 16 states have adopted this outcome in their laws.

Some states have stuck to the traditional approach of giving a one-third share to the spouse, with the children dividing the rest. Others give spouses one-half. Mississippi gives an equal share to the surviving spouse and each child; if there are nine children, the spouse gets a measly one-tenth of the estate.

Consider the complications this could cause. If your kids are young, your surviving spouse will have the hassle of accounting for the kids’ funds separately and the worry of what the darlings will do with the money when they come of legal age. If your kids are grown, your spouse may have to rely on them for help to maintain his or her current lifestyle.

Even if you have no kids, your spouse may not get everything; in some states, the deceased spouse’s parents, siblings, nieces or nephews and even more distant relatives receive a cut.

Conversely, if you die intestate with a second spouse and kids from a first marriage, the kids could end up with a lot less than you’d want. In the “I love you” states, the second spouse typically gets a minimum of \$100,000 and splits the rest 50/50 with your kids. But your 401(k) and other workplace pension plans aren’t part of that split; federal law automatically awards them to your current spouse, unless he or she has signed a form waiving rights to them. The spouse gets the house, too, if you two own it as joint tenants, as is common. The same goes for a jointly owned brokerage account.

A will is even more essential if you want to leave assets to a partner you’re not married to. Most states’ intestacy laws are brutal on unmarried couples. Your live-in partner of 20 years could get nothing and be forced from your shared home. “I’ve seen people come in and say, ‘We’re not really married, but for all intents and purposes, we are,’” says Rebecca Manicone, an estate lawyer with Greenberg Traurig in McLean, Va. “Well, that doesn’t cut it.”

There are a few exceptions. In California, the District of Columbia, Maine, New Jersey and Washington, if a couple has signed up on a state partners’ registry and one dies without a will, the surviving partner will get whatever a spouse would have inherited. These registries are available to couples regardless of sexual orientation.

Warning: Don’t confuse these state registries with those offered by some cities. The city lists give partners the right to workplace benefits but not, in most cases, inheritance rights, which are governed by state law.

The other exception? In those states that still recognize “common law marriage,” a longstanding heterosexual partner might be able to claim the spouse’s share of your estate.

What if you die intestate leaving no spouse (common law or otherwise) and no kids? Your parents and siblings are usually next in line to inherit. In nine states, the parents of your late spouse are in line, too, albeit toward the rear. In Colorado, a biological parent who gave you up for adoption can be an intestacy heir.

So don’t put it off. Get a will written and sign it. Timothy Speiss, a CPA in charge of Eisner LLP’s wealth advisory group in New York, laments, “We have some clients with very well-traveled, unsigned wills.”