

# Wills and Estates



## A BASIC GUIDE TO WILLS AND ESTATES



**MAYER DEARMAN & PELLIZZARO**  
COMMITTED TO EXCELLENCE IN THE PRACTICE OF LAW

# WHAT HAPPENS IF YOU DIE WITHOUT A WILL?

If you die intestate (without a valid will) your estate will be divided among your surviving relatives, in accordance with the Intestate Succession Act. The share that they receive will be determined by the legislation and you will not have any say in how your property will be divided. For example, you will not be able to leave specific items or heirlooms to a person of your choosing, nor will you be able to leave a greater share to one person or leave anything to a friend, charity or other non-relative.

Dying without a will also means that you will not be able to choose who will administer your estate and carry out your last wishes.

If you die without any descendants at all, and have not made a will, then your estate will go to the government.



## PICKING AN EXECUTOR

The executor is the person who will carry out the instructions of your will. The executor can be your spouse, an adult child, or friend. You can also use a professional such as a Trust Company or lawyer. If you wish, you can appoint more than one trustee.

What is important is that the person you pick be responsible and trustworthy. It will be their duty to carry out the instructions of your will and make sure that your beneficiaries receive what they are entitled to. Your trustee will be handling all of your property and savings, they may also have to sell assets in your estate, such as your home, in order to divide the proceeds among your beneficiaries, and so you should only pick someone whom you trust and who has the time and ability to handle these matters.

It is also a good idea to designate at least one alternate trustee in case your first choice cannot carry out his or her duties.

# COMMON TERMS

## USED IN WILLS AND ESTATES

### Administration of an estate

Term used for the work of the executor or administrator in carrying out the terms of a will.

### Attestation or attestation clause

A signature clause in a will.

### Beneficiary

Someone named in a legal document to inherit money or other property. Wills, trusts, and insurance policies commonly name beneficiaries; beneficiaries can also be named for “payable-on-death” accounts. A beneficiary can be a person or an organization such as a charity.

### Bequeath

To leave property at one’s death; another word for “give.”



### Estate

The totality of the property which the deceased owned or had some interest in at the time of death. This can include personal property such as a car, jewelry, money, or real estate.

### Issue

Direct descendants, including children, grandchildren, and so on. A spouse, brothers, sisters, parents, and other relatives are not issue.

### Intestate

Dying without leaving a will, or leaving an invalid will, so that the property of the estate passes by the laws of succession rather than by the direction of the deceased.

## Executor

The person named in a will, and appointed by the probate court after the will-maker's death, to wind up the affairs of a deceased person. Sometimes, executors are also called "personal representatives."

## Executrix

An old-fashioned term for a female executor. Most wills these days use "executor," whether the person is a man or woman.

## Per capita

A way of dividing property among the descendants of a deceased heir beneficiary. When an estate is left to a group of beneficiaries per capita, and one or more of the original beneficiaries dies before receiving their share of the estate, the remaining members of the group divide his or share among them. For example, if you were to leave your estate to 4 people per capita and one of these intended beneficiaries dies before you do, then the remaining three would receive all of your estate.

## Per stirpes

A Latin term which when used in a will means that the estate will be divided among the descendants of an original, now deceased beneficiary. For example, if you were to leave your estate to four people, but one of them died before you did, then his or her share of your estate, would go to his direct descendants. This means that his or her share could be subdivided into much smaller shares, depending on the number of children they had. The 3 surviving beneficiaries would still only each receive a quarter of your estate each. But if the deceased beneficiary had, for example, two children, then they would each receive 12.5% of your estate. In other words, they would receive half of what their deceased parent would have inherited because their parent's share would be divided equally among his or her children. If the deceased beneficiary had more children, then the estate would be divided among them equally, creating even smaller shares.

## Residue or residuary estate

All property subject to a will that isn't given away specifically in the will. Often, a will leaves certain valuable items to named beneficiaries and then "the rest and residue of my estate" to another beneficiary.

## Testate

Having made a valid will prior to death.

## Testator

Someone who writes and executes (signs) a will.

## Testatrix

The old-fashioned term for a female will-writer.

## Trustee

Someone who has legal authority over the assets in a trust.

## Undue influence

Influence amounting to coercion placed on a will-maker, which will invalidate a will.

## Will

A legal document expressing the intentions of a person for the distribution of their assets after death.

## Will-maker

A plain English term now often used instead of testator or testatrix.

## Witness

A person who is present at the signing of a will by the will-maker.



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