



Why do I need a Will? Part 2

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By Dorothy Hagel

Rules of the intestacy apply when dividing an estate of someone who died without a valid will. What's intestacy? Simply put, intestacy is the state of dying without a valid will. When someone dies intestate, it means that they have left no valid instructions for how their estate and assets should be distributed. It is then important to remember that one should not only leave instructions as to how to distribute an estate but one needs to ensure that these instructions do actually constitute a valid testamentary disposition.

The law provides rules on dividing a deceased person's estate if no valid will exists. These rules are called the rules of intestacy.

The rules of intestacy essentially divide a person's estate among blood relatives, with the exception of the deceased's spouse. A spouse is entitled to the first \$200,000.00 ("preferential share") of the estate and the remainder of the estate is split between the spouse and children. If there is only one child, the spouse and child split the remainder of the estate equally. If there is more than one child, the spouse receives one-third of the remainder and the children split the remaining two-thirds equally.

For example, suppose you had a spouse and three children and your estate was valued at \$500,000.00. Under the intestacy rules the spouse will receive \$200,000 and will shares the remaining \$300,000 equally with the children by receiving \$100,000 in addition to the preferential share, while each of the three children will

receive \$67,667. As you can see, it's not as simple as taking your estate and dividing equally among your spouse and children.

Some things to remember:

- It is very important to remember the rules of intestacy with respect to second marriages: any spouse, whether the biological parent of your children or not, is entitled to the first \$200,000.00 of your estate.
- If the estate is only valued at \$200,000.00 or less then the entire estate is left to the spouse.
- The rules of intestacy do not take into account step-children and non-blood relations.
- The rules of intestacy do not provide for gifts to charitable foundations.
- If you would rather your estate be distributed differently than what the rules of intestacy dictate, you can only do this by having a valid will.
- An estate trustee appointed by a valid will is authorized to deal with the estate immediately after the person dies; When there is no will, nobody is authorized to do anything until after the certificate of appointment of an estate trustee without a will is issued by the Court.

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