

Q: What Happens to My Property if I Die Without a Will?

A: Your Family Tree Will Control.

Every Soldier who goes through a Soldier Readiness Processing (SRP) event is asked whether they need a will, also known as a Last Will and Testament. Although this is a required part of every SRP, having a will is not actually required. A will is a voluntary document and each Soldier must decide whether they need and want one. Having a will is highly recommended, but not everyone needs one. If you die without a will your property will likely still go to your close family, but may not be distributed exactly as you would have wanted. So what does happen to your property if you die without a will? It depends on what your family tree looks like.

Every state has a Statute of Descent that will control what happens to your estate if you die without a will. The provisions differ slightly between the states, but the common intent and effect of all Statutes of Descent is to standardize how your estate will be disposed of if you die without leaving specific instructions about what to do with your property. A Statute of Descent is basically a road map of your family tree that determines who the state considers your closest remaining living relative(s).

Not all states take exactly the same route along the family tree map, but they all do start at home. In Virginia, if you are married and die without a will, the first person in line to take your property is your spouse. If you have children, however, it may get more complicated. If all of your children belong to you and your surviving spouse, your spouse retains all of your estate. If there are children not born to your surviving spouse (from a relationship outside your current/last marriage), your spouse will have to share your estate. In this instance, the surviving spouse gets one third of the estate. Your child or children, or the descendants of any child who fails to survive you, gets the remaining two thirds of the estate. A couple of examples may help to explain how this rule is applied.

If you die without a will with a surviving spouse and the only children you have are the three from the marriage, your spouse takes 100% of the estate. If, however, you have a surviving spouse, three children of the marriage, and one child from a previous relationship, the children (all four of them) will share two thirds (66.6%) of the estate. Your surviving spouse will get the remaining one third (33.3%). Sometimes this rule may result in a circumstance you never intended. For instance, if you die without a will and have a surviving spouse, no children from the marriage, but a child from a prior relationship, your one child gets two thirds (66.6%) of the estate and your surviving spouse gets only one third (33.3%). If you are not okay with this type of division of your estate, you definitely need a will.

If you die without a surviving spouse, but have children, the children will share the entire estate. This includes all children born to you, not just those from your current/last marriage. For instance, if you die without a will and without a surviving

spouse, but have three children from your current/last marriage and one child from a previous relationship, the children (all four of them) will share your estate (25% to each). If you are not okay with this type of division of your estate, you definitely need a will.

If you die without a will and you have no surviving spouse (meaning you are single, divorced, or a widow/er) and you have no children, your estate will go to your parents, or to your surviving parent. Your parents will share your estate equally; 50% to mom and 50% to dad. This is true regardless of your parents' situation. Even if your parents are divorced, your mom is a millionaire and your dad is homeless, they get equal shares of your estate. Your mom doesn't need your estate. Your dad could certainly benefit from your estate. But they will share equally. If you are not okay with this type of division of your estate, you definitely need a will.

The Virginia Statute of Descent continues to go down the family tree. The situations discussed above are only the first three "stops" on the family tree map. The remainder of the twelve "stops" look for surviving brothers and sisters, then grandparents, then aunts and uncles, then great grandparents, then grand aunts and uncles. Eventually, if you have no living blood relatives, the search jumps over to your spouse's family and we start all over with your spouse's parents and work down the tree again. If you have no living relatives and there are no living relatives of your spouse or you were never married, everyone gets to share in your estate. At that point, the Commonwealth of Virginia would take your estate.

Unless you've had a lot of branches fall your family tree you probably don't have to worry about your estate being taken by your grandparents or cousins or your spouse's family and certainly not by the state. The Virginia Statute of Descent, or any state's Statute of Descent, is likely to eventually identify a blood relative, perhaps even a close blood relative that would take your estate if you die without a will. But if you want to control who takes your estate and how much they get or make it clear who you don't want to take from your estate, you need to specify your wishes in a will.

To make an appointment to have a will prepared, or to talk to an attorney about estate planning, you can call the Client Services Division at 804 765 1500.