

What Happens If I Pass Away Without a Will in Virginia?

Over half of all Americans do not have a Last Will and Testament. Thus, many people wonder what will happen if you pass away without a will. The answer to this question depends on the type of property, and the way it is owned.

Many assets are “non-probate” assets. These assets include life insurance, retirement accounts, stocks, pay on death bank accounts, and transfer on death accounts. All of these assets allow you to name a beneficiary, who will receive the asset at your death. It is important always to name a primary beneficiary and a secondary beneficiary so that if your primary beneficiary predeceases you, there will be another person who can receive the asset at your death. Always make sure that your beneficiary forms are up to date. If you do not name a beneficiary, or if your beneficiaries predecease you, then your assets will go into your estate, and then must go through probate.

Assets that are held jointly with rights of survivorship will pass to the other joint owner as long as that joint owner is still alive at the time of your death. If you own a home as “tenants by the entirety” with a spouse or own a home or a bank account jointly with rights of survivorship with a spouse or another individual, then that property will pass automatically to the other person if you die first. If the other person has predeceased you, then that asset will become part of your probate estate.

Probate is the process of proving that your Will is in fact your Will. If you do not have a Will at the time of your death, then your non-beneficiary, non-jointly held assets will still go through probate. The process will likely be more challenging for those you leave behind. Any family member or friend will be able to petition the court where you lived to be the Administrator of your estate.

The court will use Virginia’s statute on intestacy to determine who will receive your property at your death. The statute follows your family tree, and your property may go to people that you do not want it to go to. If you are married, but have children from a prior relationship, then your spouse will only get one-third of your property, and your children will get the other two-thirds. There are other laws that will protect your spouse so he/she may get more than that, but it becomes complicated. If you are not married then the statute will follow your family tree down to your children or up to your parents, and so on.

However, you may not like the default way that the statute handles property. Perhaps you want your spouse to get everything you own if you predecease your spouse. Perhaps you do not want your children, your parents, or your siblings to inherit anything from you. The primary way to make sure that your wishes are known, and your probate property passes the way you want it to at the time of your death, is to make a Will. Please contact the Client Services Division at 804-765-1500 to schedule an appointment so that we may discuss your estate planning options with you.