

What happens when someone dies without a will?

When someone dies without a will, they have died intestate. "Dying intestate" means that your home state, such as the state of New York, decides who will administer your estate, raise your minor children, and keep your assets. Accordingly, dying without leaving a valid will can cause many complications for the surviving family members at an already difficult time. In this article, we take a look at the ways your lawyer can help you if a relative has died without leaving a will.

Dying Intestate – What does it mean?

Dying intestate is the legal terminology used to refer to someone who has died without leaving a will. Someone may die intestate because they have not made a will, because they revoked a previous will and didn't make a new one, because it was lost or destroyed, or because the will that they made was not legally valid for some reason.

What happens when someone dies intestate?

When someone dies without leaving a will, there are statutory rules which apply. These rules state how the estate should be divided up amongst the surviving relatives. If the person who died left behind a spouse (or civil partner), he or she will usually have priority over any other relatives. If they do not, but have children, the children will usually have priority over other relatives.

If someone dies and they do not have any relatives, according to the laws regarding intestacy, their estate will go to the state in which they resided. Therefore, it's extremely important to contact an attorney as soon as possible if a relative dies without leaving a will and you believe that you may have a claim to their estate. Your attorney will be able to tell you whether or not you have a claim and inform you about the procedure to follow if you do have a claim.

When someone dies intestate, there may be other issues that arise as well as issues relating to the division of the estate. For example, if your relative had the sole responsibility of young children and died without leaving a will stating who he or she wanted to become the children's guardians, a court of law will need to appoint guardians for them. This can be an extremely distressing situation for a child who has just lost a parent. If you believe that your relative would have wanted you to look after their children, it's vital that you discuss this with an attorney as soon as possible.

What should your first steps be if a relative dies without leaving a will?

If a relative dies intestate, choose a probate lawyer and book an initial appointment as soon as possible. Your attorney will be able to discuss all the issues relating to intestacy with you and advise you about any steps that you need to take to resolve the situation.

The Administration Procedure

The Administration proceeding is begun by filing an Administration petition with the Surrogate's Court in the county in which the decedent resided. After jurisdiction has been completed and all issues have

been addressed, the Court will issue Letters of Administration. This document gives the appointed Administrator the authority to act on behalf of the estate.

The role of the Administrator is the same as that of the Executor. He or she will be expected to liquidate and/or collect the assets of the estate, file and pay income and estate taxes, address creditors' claims and make distributions according to the law of intestacy. Since the decedent died without a Will, the law governs how the estate is distributed.

New York is not a Community Property state, which means that property acquired during a marriage (except for gifts or inheritances) does not automatically all go to the surviving spouse, although it may, depending on who else is surviving among other family members. Without a Will, in New York your estate will be distributed as described below.

Surviving spouse –A surviving spouse is generally first in line to get any assets from an intestate estate, but the amount that he or she is entitled to varies as follows:

- If there are no surviving issue (children, grandchildren, great-grandchildren), a surviving spouse gets the entire estate.
- If there are surviving children, a surviving spouse gets the first \$50,000, plus one-half of the remaining property in the estate and the surviving children split the remaining property in equal shares.

If there is no surviving spouse, the entire estate passes to the surviving relatives in the following order of priority:

- Decedent's issue.
- Decedent's parent or parents equally.
- Issue of decedent's parents (brothers, sisters).
- If none of the above relatives are surviving, but the decedent is survived by one or more grandparents or the immediate issue of grandparents (aunts and uncles), half of the estate passes to the paternal grandparents if both survive, or to the surviving paternal grandparent or to the issue of the paternal grandparents if both are deceased. The other half passes to the maternal relatives in the same manner.
- If there is no surviving grandparent or issue of grandparents on either side, the entire estate passes to the relatives on the surviving side in the same manner as the half portion would.
- The issue of grandchildren does not include those individuals more remote than grandchildren of such grandparents. Great-grandchildren of the decedent's grandparents split one-half to the great-grandchildren of the paternal grandparents side and one-half to the great-grandchildren of the maternal grandparents side. If there are no great-grandchildren of grandparents on one side, the whole amount goes to the other half.

If there is no taker under any of the above provisions, the intestate estate passes to the state of New York.

Complicated enough for you? To make sure that your property is distributed according to your wishes, get in touch with an estate planning attorney and make a Will now. There's no time like the present.