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Maybe You Don't Need a Will

You can use simpler and more private methods to leave certain assets to your loved ones after you die.



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What do Prince, Abraham Lincoln, Howard Hughes, Pablo Picasso and Bob Marley all have in common? Yes, they were all wealthy men. Also, they all died without a will.

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Leaving no will can often lead to hard feelings and awkward holiday gatherings for the survivors. And when there is no will, the state has its own estate plan for you known as intestacy whereby your family members receive everything. For example, Howard Hughes' surviving relatives were his 22 cousins, who all shared equally in his estate.

These proceedings are public and require that all necessary parties be found. Those that cannot be found are appointed an attorney to fight for their clients (whom they usually never meet because, you know, they can't be found). In other words, not leaving a will means your family members can split your estate, whether you wanted them to or not.

However, not all assets are controlled by your estate. For example, not having a will has no effect on who receives retirement plans, jointly owned property, transfer on death accounts and life insurance proceeds.

When you purchase life insurance you are asked to name a beneficiary to receive the policy's proceeds when you die. The moment you breathe your last breath the insurance company is contractually required to pay the death benefit to the beneficiary you named. Under these circumstances, no probate or estate administration is needed.

Likewise, your retirement plan has a beneficiary designation form stating who receives the retirement plan assets when you pass away; when that moment happens the retirement plan becomes the legal property of the beneficiary, meaning your estate never has the chance to receive the property. Your will could even say, "I leave my retirement plans to my sister," but if the beneficiary on the account is your brother, your brother receives the proceeds because the assets are no longer owned by you.

A joint account also avoids transferring to an estate: When one owner dies, the other owner receives legal title to these assets. Alternatively, if a person wants to leave bank or brokerage account assets to another person when he passes away but maintain full control during his own life, he may set up these accounts as "In Trust For" or "Transfer on Death" when establishing the account. The general idea remains the same: As long as we know where the asset is transferred at the moment of death, the decedent's estate does not receive the funds, and no probate or estate administration is needed.

All of these assets are known as "testamentary substitutes," meaning they pass outside of a person's estate. The only things your beneficiaries need to collect these assets is an original copy of your death certificate and verification that they are the beneficiaries named on the accounts.

Plus, while probating a will or administering to a person's intestate estate are public affairs, no court supervision is required and no public records are available when assets pass as testamentary substitutes. Did Picasso have a favorite child he wanted to leave money to without letting other children know? He could have used a transfer on death account to do so. Prince may well have had a retirement plan that is paying out to someone that you and I may never know about. Bob Marley may have had a life insurance policy paying out to a child he cared about but didn't want dragged into the public's eye by gifting money to them through probate. And despite his own proclivities (or perhaps due to them), Howard Hughes may have maintained a joint account with a confidante or some other individual just for the sake of convenience.

Because of the ease of transferring testamentary substitutes, they are often suggested by estate attorneys. And for many younger spouses, most of their hard assets may be owned jointly, with their retirement plans holding much of their investment wealth, and life insurance secured on their lives.

The point is that dying without a will isn't the end of world. Even if you never get around to writing one, you can still find easier, more private ways of transferring money to your choice of beneficiary quickly, secretly and inexpensively.

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Daniel A. Timins is an estate planning and elder law attorney and a certified financial planner, helping clients with wills, probate, living needs and Medicaid planning.

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