

# DEANDRADE CALLAHAN, LLC

ATTORNEYS AT LAW

BUSINESS ◇ ESTATE PLANNING ◇ PROBATE ◇ ASSET PROTECTION

## What happens if I die without a Will?

First, a little context is required. If you own any property when you die, then your surviving spouse or family will need to go through a legal process called “Probate” in order to legally wind up your affairs, pay off your debts, and transfer your remaining property to surviving family. The Probate process applies whether you have a Will or not. The only way around the Probate process is to own all of your assets through a Living Trust, but that’s a whole different story...

If you have a valid Will, then the Probate process plays out according to the specific wishes in your Will, which should include details about who is responsible for administering your estate (the “Executor”), who is guardian for your minor children, who gets your assets, and whether those assets are left outright to people or in creditor protected trusts, just to name a few considerations.

After that little bit of background, we can go on to the answer to the question...

If you don’t have a Will, then the Probate process plays out according to default laws in the state(s) where you own property (note that if you own property in multiple states, then different state laws apply to the different properties). Think of these default laws as a generic Will template provided by the state. Contrary to one popular belief, states don’t automatically take all your assets if you don’t have a Will. However, the end result of the Probate process under default state laws may not be anything close to your actual wishes. Specifically, here are some examples of how the Probate process may be more confusing, costly, and inconsistent with your wishes if you don’t have a Will.

1. Without a Will, your family must agree who will be the Executor of your estate, and this can cause tension and power struggles.
2. If you are survived by minor children and there is no other living parent, your family and the courts must determine who will be Guardian for your children. This can cause an even bigger conflict.
3. Without a Will, state default laws determine who gets your assets, and this may not be consistent with your wishes. For example, certain state default laws can force your assets to be divided between your surviving spouse and your children (even babies). In addition to being inconsistent with your wishes, this can create additional costs and complexities in the Probate process.
4. Without a Will, you miss the opportunity to create one or more trusts to protect assets for your family or friends against creditor claims, including claims by a divorcing spouse.
5. Without a Will, the Probate process can be more costly and subject to more oversight by the court system, which must play a larger role due to the absence of specific wishes from the deceased person.

If you die without a valid Will in place, then the process of winding up your affairs will be more confusing, costly, and contentious for your family. Most likely, the end result will be inconsistent with your wishes.

**By M. Patrick Callahan, Esq.**  
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