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Trusts and Estates

# Prince's Death Puts Spotlight on Dying Without a Will

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On April 21, the musician/artist Prince, died without a will. While it seems shocking that someone so wealthy and famous, with an estate predicted to be worth hundreds of millions of dollars, would die leaving no will, he was not alone. In fact, statistical studies have shown that at least 55 percent of Americans die without a will or estate plan in place.

The publicity surrounding Prince's death and estate brought to light many questions people have about what happens when a person dies without a will. Dying without a will is known as dying "intestate" (as opposed to dying "testate," which refers to when an individual dies with a will in place). When a person dies intestate, state law governs the succession of a decedent's estate. In Prince's case, Minnesota law will govern how Prince's assets will be distributed since he died a resident of Minnesota. For purposes of this article, we will cover Pennsylvania intestate laws. The laws vary significantly from state to state, but, overall they provide for distribution among members of a decedent's immediate family.

The laws of intestate succession in Pennsylvania, which can be found in 20 Pa.C.S.A Section 2101 et seq., govern how property passes when a Pennsylvania resident dies without a will. The laws are designed to provide for the surviving spouse and children or more remote issue (i.e., grandchildren, great-grandchildren, etc.) of a decedent and, in some cases, parents, siblings, grandparents, aunts, uncles and cousins, depending on whether certain relatives are living at the time of a decedent's death.

The "rules of succession" in Pennsylvania can be summarized as follows:

- **Surviving issue and surviving spouse.** If the decedent is survived by his or her spouse and any "issue" (i.e., children of the decedent and any descendants of a predeceased child, as the case may be), and all of the issue are also the surviving spouse's issue, then the surviving spouse would receive the first \$30,000 of the estate, plus one-half of the remaining estate, if any, and the children would receive the remaining one-half balance (in the case of a deceased child, such child's descendants would take such child's share). However, in the event that at least one of the decedent's issue is not also the surviving spouse's issue, then the surviving spouse would only receive one-half of the estate (and not the first \$30,000).

- **Surviving spouse but no surviving issue.** If the decedent is survived by a spouse but not by any surviving issue or parents, then the surviving spouse would inherit the entire estate. If there are any parents living, then the spouse would receive the first \$30,000 of the estate, plus one-half of the remaining estate, if any, and the decedent's parents' would receive one-half of the remaining balance (the parents would share equally, if both are living, or all would go to the survivor of them if only one parent is living).
- **No surviving spouse.** If there is no surviving spouse, then the decedent's estate would pass to the following heirs, in the order named below:
  - **Issue.** First, the entire estate would pass to any surviving children (and, in the case of a child who is not living, his or her share would pass to his or her living descendants, if any).
  - **Parents.** If there is no surviving issue, then the entire estate would pass to the decedent's parents (the parents would share equally, if both are living, or all would go to the survivor of them if only one parent is living).
  - **Brothers, sisters or their issue.** If no parents survive the decedent, then the estate would be distributed to the decedent's siblings (or their respective issue).
  - **Grandparents.** If no siblings (or issue of siblings) survive the decedent, then the grandparents of the decedent would receive the estate (one-half to the paternal grandparents and one-half to the maternal grandparents), or their respective issue.
  - **Uncles, aunts, and their children and grandchildren.** If no grandparent survives the decedent, then the estate would be distributed to the decedent's uncles, aunts, and their children and grandchildren.
  - **Whole and half blood.** In determining relationship of any of the above, biological and adopted children are counted, but step-children are not. Also, "half" relatives would inherit as if they were "whole."
  - **Commonwealth.** If none of the relatives named above survived the decedent, then the commonwealth of Pennsylvania would receive the estate.

It is important to note that intestacy only governs property passing under a decedent's probate estate, or property which would otherwise have passed pursuant to a will had there been one in place. Intestacy does not, however, govern the disposition of non-probate assets, such as retirement plans and life insurance proceeds which pass by beneficiary designation form (or if no such form was completed by the decedent, by the terms of the account agreement prepared by the financial institution), transfer or payable on death accounts, property in trust, property held in joint accounts with rights of survivorship, or other nonprobate assets.

Even though the law provides for succession to family members when one dies without a will, so that property will rarely escheat to the commonwealth, it is still important to have a will in place for many reasons. First of all, a will provides peace of mind so that a person can specify the beneficiaries who will receive the assets of his or her estate, how much each beneficiary will receive and whether the assets will pass in trust or outright. Secondly, a will allows an individual to designate an executor to handle the administration of the estate.

Under intestacy, since there is no designated executor under a will, an administrator would need to be appointed, but the appointed party may not necessarily be the best party for the job (or at least not the party that the decedent may have had in mind to handle the estate). Finally, the administration of an intestate estate is generally significantly more costly than a well-planned estate administration, can cause fighting among family members, such as disagreements regarding the distribution of certain items (imagine how Prince's relatives will decide how to divide his music collection), and may very well lead to greater inheritance and estate tax than would have otherwise been imposed.

We will likely never know why Prince did not prepare a will. Obviously, it had nothing to do with the financial cost of doing so, since he could certainly well afford such cost. The most likely cause was simple procrastination, since the deadline for preparing a will is the last one that any of us will face. However, because we almost never can know when that deadline will arrive, it is important to be vigilant about getting a will in place, and updating it periodically as life's circumstances change, from time to time, before it is too late. •

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