

If you were to pass away without a will, where would your property go?

Would it be divided up the way you want?

Would problems develop between your surviving family members?

Would you put a large tax burden on your family?

Do you need additional estate planning tools such as:

Durable Power of Attorney?

Healthcare Power of Attorney?

Living Will?

This pamphlet should answer your questions and help you decide what documents are right for you.

Please call to set up an appointment or get more information.
You can also visit our website at: www.752GARY.com for more information.
We welcome your emails to: gary@752gary.com

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Do You Need a Will?



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Do You Need a Will?

If you pass away without a will your property will be divided up by state law *without any tax planning benefits* as follows:

Married person:

only 1/3 of separate personal property and a life estate in 1/3 of separate real estate goes to spouse.

If all children are yours and your spouse's, all community property goes to surviving spouse; but if you have "his," "hers," and "ours" children, then *only* the surviving spouse's 1/2 community property interest is retained, and *the remaining community property is given to the children.*

homestead exception: the surviving spouse retains a *life estate* in the marital homestead unless the surviving spouse ceases to reside there.

Unmarried person with children:

all property goes to children in equal shares

Unmarried, no children:

All property divided by statutory formula to parents, brothers, sisters, and their descendants (Probate Code § 38)

Using the above information, you can see that particular problems arise for married folks whose children are mixed (that is they do not all have the same parents). This also poses a problem if an unknown child comes forward after your death. In that situation half of the community property goes to the children and 2/3 of the separate property. Imagine how you would feel if your spouse

passed away and then suddenly half of your belongings and 2/3 of your spouses separate belongings are sold or all of your belongings are sold and you get half of the money (remember they may be sold at garage sale prices!). The other problem arises if you have an estate that will incur tax liability (even if deferred). Lastly, a person dying without a will is subject to a very costly and cumbersome court-supervised administration of the estate.

Advantages to having a will:

1. Estate planning can be implemented to save taxes
2. No surprises, your estate will be divided up in the manner you wish
3. Guardians and trusts can be set up for your children
4. Relatively inexpensive independent administration is available
5. With proper estate planning you can save grief and expense for your family

Other tools:

Durable Power of Attorney

Allows you to set up an "attorney in fact" who can sign your name and take care of transactions for you in event of disability or absence. Can also be set up to be a full time document.

Healthcare Power of Attorney

Similar to above, except it is used to designate someone to make healthcare decisions for you should you be unable to make them yourself.

Living Will (Directive to Physician)

A document used to set up your wishes should you become in a health situation where you would otherwise pass away but for artificial life support.

We would love to be your estate planning attorney. Please feel free to contact us to set up a consultation or take advantage of our do-it-yourself estate plan kits. We can set you up with anything from a simple will to a full estate plan with tax saving trust planning for larger estates. We also provide family law, pre-marital counseling, debt reduction counseling, business and tax planning, traffic ticket, criminal, and juvenile defense, and general civil litigation services.

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