

Wills and Probate

A *will* is a legal document that directs the court how to distribute your assets after death. In order to create a will you must be competent enough to know the nature and extent of your estate, be able to formulate a plan of distribution, know the natural objects of your bounty and understand the relationship of the above. A will must also be signed by the testator (person for whom the will is written) and signed by two competent and disinterested witnesses in the presence of the testator and each other. Wills must be revoked and/or amended with the same formality with which they are made. Any handwritten modifications to a will have no effect.

What happens to my property if I don't have a will?

- If there is a surviving spouse and the children of the deceased are all children of the surviving spouse, the surviving spouse receives all property.
- If there is a surviving spouse and some children of the deceased are not children of the surviving spouse, the spouse gets half real property, all household property, and half of all other personal property not necessary for the repayment of debt. The other half of all property is distributed equally to the children of the decedent.
- If there is no spouse, all property goes to the children in equal shares.

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- When there is no surviving spouse or children, the order of inheritance is: parents of the decedent, then children of the decedent's parents, including half brothers and sisters.

Can I disinherit my family in my will?

If a surviving spouse is not happy with property given by will, the spouse can elect to take against the will and receive the statutory amount instead. Generally the surviving spouse will receive one third of all real property (including the homestead) and one third of all personal property not necessary for the payment of debts. There is no statutory provision in Iowa protecting disinherited children; therefore, children will only receive property bequeathed by will.

What will happen to my estate after I die?

The *probate process* is the legal process for proving the validity of a will and distributing your assets according to that will. The person who is named in the will as executor will be in charge of the probate process with your lawyer. The process can be lengthy and costly and usually lasts several months. With the supervision of the courts, the executor must identify and inventory property of the deceased, have the property appraised, pay all debts and taxes and finally distribute remaining property as the will directs. If you die intestate (without a will), the same process will take place except the court will appoint an administrator of its choosing to carry out the probate process and remaining property will be distributed according to Iowa law instead of as directed by a will.

Probate is a public process and the proceedings will be available in public records. The property may also be tied up in the process for several months and will not be readily available to the heirs. For these reasons, many people try to avoid extensive probate proceedings. Property held in living trusts, joint bank accounts or pay on death accounts, real estate held in joint tenancy, and some life insurance proceeds are not subject to probate.