

WHAT HAPPENS IF I DIE WITHOUT A WILL OR TRUST?

*Examine What Would Happen If You Died
Without A Will Or A Trust Directing the
Transfer Of Your Financial Assets*



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As you are planning ahead for retirement you should have a thorough Estate planning is often shuttled aside. Surveys that are done consistently find that most American adults have not executed all of the appropriate estate planning documents.

This is hard to comprehend, because passing away is something that is absolutely inevitable. How do you justify a failure to plan ahead for something that is certainly going to take place?

In this paper we will examine what would happen if you died without a will or a trust directing the transfer of your financial assets.

INTESTACY

If you die without any estate planning documents directing the transfer of your assets, you are said to have died intestate. The exact scenario that will unfold

after your passing will vary depending on the circumstances.



A very interesting intestacy case is currently playing itself out in the state of New York. Back in 2012 a Holocaust survivor name Roman Blum died in possession of an estate valued at some \$40 million. He was 97 years of age when he passed

away.

Blum was a successful real estate investor. He was not an unsophisticated man, and he was aware of the ramifications of intestacy according to remarks attributed to people close to him. However, he did in fact die intestate.

It appears as though Blum left behind no living relatives. The Surrogate's Court has appointed a personal representative. This representative is charged with the responsibility of attempting to find a blood relative within three years of the decedent's passing. He is authorized to utilize funds from the estate to engage genealogists.

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If no one is found within this three year time frame, the state of New York will absorb the assets that comprise the Blum estate under escheat laws.

This is reportedly the largest intestacy case in the history of the state of New York.

This case is instructive as we examine the topic of intestacy. If you die without a last will or a trust and you have no living relatives, the state will ultimately assume ownership of the assets that were in your possession at the time of your death.

If you do have relatives alive, the state will eventually distribute your resources utilizing intestate succession laws. These laws vary on a state-by-state basis, but they generally bear certain similarities.

In New York the surviving spouse would inherit everything if the decedent was married and had no descendents. If the decedent was not married and had descendents, they would inherit everything.

If the decedent did not have a spouse or descendants, but did in fact have a parent or parents still living, the parents would inherit the property in question.

Siblings would inherit everything if there was no surviving spouse, no surviving parents, and no descendants.

NEGATIVE CONSEQUENCES

There are negative consequences that can go along with intestacy. Clearly, you probably would not want the state to inherit everything that you own if you do not have blood relatives still alive.

It is likely that you have friends or acquaintances that you care about to one



extent or another. Short of this, you would probably prefer to have your resources put to good use by a worthy charity.

If your assets were distributed according to intestate succession laws, the outcome may not be

consistent with what you would have wanted.

For example, you may have very close friends, and you be involved in a long-term intimate relationship with someone that you are not married to. Let's say that you never had children, and your parents are no longer alive.

You have one brother who has not spoken to you in 30 years who lives in Alaska. You live in New York, surrounded by your friends and your significant other.

Under these circumstances, would you want your brother to inherit everything



that you own? Using this hypothetical scenario, this is what would happen if you died intestate.

Here's another scenario. You have one brother and no other siblings. You and your brother are extremely close. He acted as kind of a de facto parent when you were a

child, because your mother died during childbirth, and your father was not around.

If you die intestate and your father is still alive, he would be the sole heir to your property. Your brother would receive nothing.

CONCLUSION

Medicaid is available to people with financial need. Medicare is not a need-based program. You become eligible for Medicare if you have earned enough credits when you reach the age of 65. There is no age requirement for Medicaid eligibility.

Medicaid will assist with long-term care expenses, but Medicare will not. This is why Medicaid is relevant to senior citizens who qualify for Medicare.

Medicaid planning can be complex. The best way to go about it is with the assistance of a licensed New York elder care attorney. If you go forward without qualified legal counsel unintended negative consequences could arise.

REFERENCES

Medicare

<http://www.medicare.gov/>

Medicaid

<http://www.medicaid.gov/>

Social Security Administration

<http://www.ssa.gov/retire2/credits1.htm>

About the Author



Mark S. Eghrari

Mark S. Eghrari is an attorney in private practice in Smithtown, New York. He has been in practice since 1988. Mark S. Eghrari provides extensive estate and tax planning services to individuals and businesses. Mr. Eghrari's primary focus is helping clients avoid probate, minimize or eliminate Federal and State Estate taxes and protect their assets from the high cost of nursing care, if they become ill. Mr. Eghrari's expertise is in providing unique and innovative estate planning solutions that create a secure future for his clients and their loved ones. Mr. Eghrari is a member of the American Bar Association and New York State Bar Association as well as the National Academy of Elder Law Attorneys and the American Academy of Estate Planning Attorneys.

Mr. Eghrari completed his undergraduate work at Lafayette College in Easton, Pennsylvania and received his MBA in banking and finance from Hofstra University on Long Island. He earned his Juris Doctorate from the Hofstra University School of Law, where he was a member of the Law Review. While in law school, Mr. Eghrari gained practical experience in the corporate tax department of Citicorp in New York city.

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