

# Do I Need a Will?

There is a common misconception that only those individuals with sizable assets need a Will. This is simply untrue. Anyone who is interested in directing the assets they have amassed over their lifetime should have a Will.

Let's start by explaining what will happen to your estate if you die without a Will. If you fail to plan your estate and die without a Will, the laws of the Commonwealth of Massachusetts will create an estate plan for you. The entire system of "intestate" succession or "descent by distribution" is set forth by statute and is too complex for a detailed discussion here. But some surprising and frequently undesirable results can occur. For instance, the law prescribes both the persons to whom your property will pass and the division of your estate among those persons. Also, the distributions provided by law are inflexible and may not satisfy your desires as to the distribution of your estate. In addition, if your children are minors at the time of your death, a cumbersome and costly legal guardianship may be necessary to determine distributions.

Many times the laws of the Commonwealth will distribute property in the same way that an individual might otherwise distribute their property. However, issues that could complicate the statutory distribution are:

- Separation, but not divorce
- Minor children
- Children who may have become estranged
- Children or grandchildren with special needs
- Beneficiaries who are unable to manage their inheritance
- Parents who have become estranged
- Elderly parents

If these issues, and sometimes those that are not itemized above are present in your circumstances, then you might want to consider the execution of a Will. Additionally, while you might not be confronted with these issues, sometimes there is a desire to benefit one beneficiary over another, or to make specific distributions to more distant relatives or charitable institutions.

Another benefit to the execution of a Will is if you have minor or disabled children, you can name who will raise your children by appointing a guardian in your Will. Keep in mind that this appointment is crucial if both parents are not living because if one parent is still living, he or she ordinarily will raise and support the children. If you do not have a Will, the court will make the selection of a guardian depending on who petitions. We recommend that you take control of this important decision, rather than leaving it to a judge unfamiliar with your family situation.

Often, an immediate choice in selecting who will raise your children is your parents. But in many situations such a decision is unwise. For example, assume that your youngest child is three years old, and your parents are 68. When the child is 15, the grandparent will be 80. Under these circumstances, another choice may be better for your child. You should look first to your contemporaries, such as brothers, sisters, cousins, or friends with children in the same age range as your children. In any case, you should consult with the proposed guardian to ensure that the person is agreeable to assuming the significant responsibility.

With the proper planning of a Will, you should be able to take comfort in knowing that your wishes with respect to the distribution of your property and the guardianship of your children will survive you.