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If You Don't Have a Will

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strict on this also. It isn't sufficient to draw a mark through a paragraph or to write the word "omit" across it. Such marks or writings as these that might seem to change a will actually do not. Likewise, writing extra words or lines on a will doesn't accomplish the desired changes either. There have been many cases where a person *thought* he had legally changed his will in these ways but was mistaken, and the property could not be disposed of as he wished.

If changes are to be made in a will, have them made by your lawyer. He will add a proper *codicil*—a simple addition to the will. If substantial changes are to be made, a new will usually should be prepared. Any will should be reviewed periodically or after each change in the family or family fortunes to make sure that the plans are always up to date.

Safekeeping . . .

Once a will is made, it should be carefully preserved. The lawyer or some other responsible person should have an unsigned copy. The original, signed copy should be put in a safe place. It's wise to tell someone in the family, or the executor named in the will, where the will is kept. This will avoid the problem of a "lost" will.

A will may also be filed in the office of the clerk of the district court in the county, sealed so that no one can read it. Iowa law requires the clerk to file it and preserve it until the maker dies or until he wants it back.

By making a good will that has been well thought out and carefully prepared, a person may be sure that his wishes as to his property will be carried out after his death.

Your Estate . . .

If You Don't Have a Will

When a person dies without a will, his property is distributed according to a rigid and inflexible scheme set up by law — regardless of the specific wishes he may have had. Here is what happens if there is no will.

by John C. O'Byrne and John F. Timmons

WHEN A PERSON dies without making a will, he is considered in law to have died *intestate*. Property owned at the time of death is distributed among spouse and heirs-at-law according to a *fixed plan* set out in the provisions of the Iowa statutes. Unless there is a will, these statutory provisions control the method of distribution of an estate.

In almost every situation, a properly prepared will or a will coupled with some other transfer plan is a more effective implement of distribution than the statutory provisions. But it's important to understand what happens to property when there is no will. What happens to farm and other property if the owners make no valid advance plans for its transfer?

What Property?

All real estate within the State of Iowa is subject to the Iowa laws of distribution — regardless of the owner's residence. Real property outside of Iowa is distributed according to the laws of the state in which it's located,

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even though it may be owned by an Iowa resident. These laws may differ from the laws of Iowa. All personal property, wherever it may be, is subject to the Iowa laws of distribution if the deceased was a resident of Iowa.

Personal and real property are distributed under the same rules. As far as possible, debts of the deceased and the expenses of the administration of the estate are

Descent and distribution of property, according to Iowa law, in the absence of a will.

Surviving spouse		No surviving spouse	
Descendants	**No descendants**	**Descendants**	**No descendants**
1. One-third of all property goes to the surviving spouse.[a] (636.15)	1. $15,000 plus one-half of the remaining property to the spouse. (636.32)	1. Children take all, sharing equally. Share of a dead child to his issue. (636.31)	1. Whole estate to parents, or to surviving parent. (636.32) (636.39)
2. Remaining two-thirds passes to the children in equal shares. Share of a dead child to his issue. (636.31)	2. The other one-half to the parents, or to the surviving parent. (636.32) (636.39)		2. Same as No. 3 under "surviving spouse, no descendants."
	3. If both parents are dead they will be presumed to live long enough to take property, and it goes to their descendants. If no descendants, to the ascending ancestors (of the parents) and their issue. (636.40)		3. If no heirs are thus found, property goes to heirs of the deceased spouse or spouses. (636.41)
	4. If no heirs are thus found, all property goes to the spouse, or divided between the surviving spouse and the heirs of any deceased spouse. (631.41)		4. If no heirs are thus found and if the intestate is an adopted child, the estate will then pass to his natural parents. (636.43)
			5. In the absence of the special case listed above, the property will, if heirs are not found under step 3, escheat to the State of Iowa. (636.50)

[a]This could be more than one-third of the net. Dower is not subject to debts. Share may also include dower interests in property sold before death.

paid first from cash on hand and, then, from proceeds of the sale of personal property. If possible, real property is left intact for distribution. The actual property is distributed if it can be done fairly. Every effort is made to avoid the necessity of selling the property and distributing the proceeds.

Who Receives It?

Chapter 636 of the Code of Iowa determines the persons who take property as well as the amount each shall take according to a fixed scheme. In general, the law sets up an order of precedence: spouse, children, parents and then other relatives (see table). The statute is phrased in terms of the persons who are living at the death of the intestate. Thus it's necessary to determine what relatives are living and then to determine from the law how much of the property each receives.

Property or money given by an intestate during his life to an heir entitled to a share in the estate under the statutory distribution scheme usually is regarded as an "advancement" or an advance payment on his inheritance. In distributing the estate, the advancement is charged as part of his share. If his share is less than the advancement, however, no return is required. If the giver didn't mean the gift to be considered as an advance share, the recipient must furnish proof. Otherwise, the court will assume that the gift is an advancement. (This advancement doctrine does not apply when a will is made.)

Spouse and Children Surviving: The surviving spouse is entitled to one-third of the value of all real property that the deceased owned at any time during the marriage. This is the so-called *dower* interest. Normally this is one-third of the real property owned at death, but it's possible for the spouse to have a dower interest in land transferred by the deceased during life.

Real property sold during the marriage upon a court order or property in which the surviving spouse relinquished dower rights (by signing the deed), however, is not included in computing the one-third share in the real property. The spouse's dower share of real property can't be sold to pay the deceased's debts or the expenses of estate administration.

The surviving spouse may include the homestead in the one-third share of real property. The exact lands the spouse is to receive are determined by agreement, or by order of the court. If the real property is of such a nature that it can't be physically divided to provide for the dower and other shares, then it is sold, and one-third of the proceeds are paid to the surviving spouse—unless all of the interested parties agree on a system of use or sharing of the land involved. In lieu of the dower interest of one-third of the real property, the surviving spouse may elect to take a life estate in the homestead.

The surviving spouse also is entitled to one-third of all personal property left by the deceased but not needed to pay debts and expenses. The remaining real and personal property after setting off the shares of the surviving spouse and the payment of debts and expenses goes to the children of the deceased in equal shares. If a child is dead, his share goes to his children or grandchildren.

Spouse Surviving, No Children: When a husband or wife dies intestate, leaving a surviving spouse but no children, the surviving spouse receives $15,000 (or the whole of the estate if it comes to less than that) after the payment of debts and expenses. Of the amount in excess of $15,000, the surviving spouse receives half. The spouse's share, however, is free from the deceased's creditors only insofar as it includes the dower (one-third of the value of real property owned during marriage).

The *parents* of the deceased receive the other half of the estate above $15,000. If one parent is dead, the other parent takes the whole half. If both parents are dead, their share goes to *their* lineal descendants as set forth by law. If no such heirs can be found, this half share of the property is given to the surviving spouse of the deceased or divided between the surviving spouse and the heirs of any deceased spouse.

Children Surviving, No Spouse: If a person dies leaving children and no spouse, the property descends to the children in equal shares. If any of the children are dead, then their shares go to their descendants.

Relatives Surviving, No Spouse or Children: When no spouse or descendants are left, all property goes to the parents of the deceased in equal shares. If only one parent is living, all goes to the one parent.

If both parents are dead, the property goes to the intestate's brothers or sisters in equal shares. If any of the brothers or sisters are dead, the share of that brother or sister goes to his or her children.

If there are no brothers or sisters of the intestate or if they died without leaving children, then the property goes to the grandparents, if living, or to the brothers and sisters of the intestate's parents (the deceased's uncles and aunts) or, if they are dead, to their children (the deceased's cousins).

The theory behind this method of distribution is this: The property owned by the intestate who died without leaving a spouse or children is divided among his direct ancestors, then distributed to the persons who are the living descendants of those ancestors. Thus, in the first instance, the de-

ceased's property would be distributed as if his mother and father each owned half of the estate. Each half would go to their respective descendants, their children and grandchildren (the intestate's brothers, sisters, nieces and nephews).

If none of these were alive, the property would be distributed as if his four grandparents each owned one-quarter of the estate. Tracing their descendants would lead to the intestate's uncles, aunts and cousins. If no heirs were thus found, his property would be distributed as if his eight great-grandparents each owned one-eighth of his estate, and so on. If no heirs are thus found, the share goes to the heirs of the intestate's spouse (or previous spouses), determined according to the same theory.

No Surviving Relatives: If no heirs are found, the property *escheats* to the State of Iowa. The state takes the property, sells it and uses the proceeds for school purposes.

The Disadvantages . . .

The statutory scheme of distributing property is rigid and inflexible. It isn't based on the desires of the particular individual. Most individuals have particular desires about the distribution of their property when they die. Differences in these desires arise from personal objectives, kind and extent of property holdings and family composition. From this standpoint, the statutory scheme is seldom the best plan—it just "fills the gap" when someone dies and has failed to make property transfer plans in advance.

Sometimes the statutory scheme results in consequences in complete conflict with the decedent's desires. A husband died, for example, without a will and leaving a wife but no children or close relatives. He may have expected that his wife would receive everything that he left. Under the statute, however, half of everything over $15,000 was distributed up through his ancestors and down to their descendants. That property went to relatives he hardly knew rather than to his own widow.

Likewise, the statutory scheme sometimes adds unnecessary costs and inconveniences. A man died leaving a wife and several young children. He may have expected that all his property would go to his wife, who would use it for herself and the children. Not so. Under the statute, she received one-third. The other two-thirds belonged to the children. Because they were minors, however, a legal guardianship had to be set up until they became of age. It was necessary for the court to appoint a guardian to manage the property, and court authority had to be obtained every time there was an occasion to deal with the property or to spend any of the children's money.

Inheritance is a factor often overlooked by the young person who thinks there is no need for a will. Another example: A widower with substantial property had one son and no other close relatives. The son and his wife lived on the father's farm and had no resources of their own. The father's will left the farm to the son, but the son had never bothered to make a will of his own. Both father and son were in an auto accident. The father died in the crash, and the son died on the way to the hospital.

What happened to the property? It passed to the son by the father's will. But then the property was transferred by the intestate laws. The son's wife received only part of the farm. Half of everything over $15,000 went to distant cousins, and the farm had to be sold to pay their share.

Insurance is a factor sometimes ignored, too. Here's an example: A young man married while still in military service and brought his wife to his parents' farm. Having no immediate family of her own, she developed great affection for her husband's family. The couple was young, had no children and didn't think wills were needed.

The wife went to meet her husband on his first leave. There was an accident; he was killed, and she died some weeks later of injuries. She was the beneficiary of his $15,000 insurance policy. On her death, however, the right to the $15,000 passed to her remote blood relatives whom she'd never seen. Close ties of love and affection bound her to her husband's family. But, according to the law, only her blood relatives were entitled to the money.

A Will Is Better

Even in the rare case in which the statutory distribution does exactly what a person wants, a will probably is well advised. Only in a will can the testator free his executor from giving bond, provide powers that make administration easier, set up a trust for minor children, specify what property shall be used for taxes and debts and the like. The will is not only a means of determining who gets the property; it may also be used to provide mechanics to make the distribution smoother and easier.

The *statutory scheme* outlined in this article *applies in every case* in which a person dies *without* a will or some other transfer arrangement. Even though the person had known what he wanted and even though he may have told people about his desires, the statutory scheme cannot be changed. His property will be distributed according to the statutory laws of descent. Only by a will or some other transfer arrangement can a person make his own laws of descent.