



## Elder Law: No will? The state may get your assets

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By Julian Gray and Frank Petrich /

OK, you've now accumulated a fair amount of "stuff" (that's a legal term for both personal and real property). Personal property can consist of assets such as cash, CDs, mutual funds, stocks, your baseball card collection as well as various other items that may have no real value but have significant sentimental value. You also now realize that you may not live forever (it does take some of us awhile to realize this).

You now want to figure out who you want to get what you have and how they are to receive it. A will distributes those assets of yours that do not have a beneficiary designation (life insurance, IRAs, etc.) or that are not jointly titled with another person (such as a house owned by a husband and wife) according to your wishes.

What happens if you don't have a will?

Well, the commonwealth of Pennsylvania will determine who gets what you have by its statute on Intestate (dying without a will) Succession. For example, let's assume you are married, have children, have no will and die. Your wife is entitled to the first \$30,000 plus half of the remaining intestate (assets not beneficiary designated) estate. You may or may not be happy with that result.

Another example: You have no surviving spouse, no children and no parents (your parents would get what was in the estate if they were living) but you do have brothers and/or sisters or children of deceased brothers and children. In this situation, they would all share equally in the estate. Again, a result that might not bring you much happiness.

There are other combinations and permutations that are dependent upon the relationship of survivors -- but, if there are no survivors, it can all go to the commonwealth!

Let's look at a recent dramatic situation involving a 97-year-old New York state resident, Roman Blum, who was a Holocaust survivor. He had no heirs (his former wife died 20 years before he did) and he left an estate of almost \$40 million. He apparently had no will. If no survivors can be found (a genealogy firm is conducting a search for relatives) the entire estate will go to the state of New York (a similar result would occur in Pennsylvania). For an individual purported to be a shrewd and intelligent business person, not to plan for how and where his assets would go at his death, is hard to believe.

Even if you don't have an estate anywhere near the value of Mr. Blum's, we don't think you want the commonwealth to determine where your stuff goes. You may now understand why you need a will.

Now comes the second bit of advice: Don't do it yourself! Most likely you wouldn't perform surgery on yourself. Neither should you assume you have the necessary knowledge or expertise to write an adequate will.

A recent Pennsylvania case (decided in November 2012) illustrates this all too well. George Zeevering, who died in 2011, was a Pennsylvania resident who, for whatever reason, decided to write his own will without any assistance from a lawyer. He had five children but only wanted two of his children to get what he had. He wrote in his will that he wanted the other three children (all daughters) to get nothing. He gave his pickup truck to one daughter and summer property he owned in Maryland to his son (he apparently forgot or was unaware of the fact that this property was already titled in his name and that of his son as "joint tenants with right of survivorship," thus his will was of no effect as to this property. He had probate assets (those that would pass under his will) worth \$217,000 (all cash) which he did not specifically mention. We could assume that he wanted these assets to go to his two favored children.

However, Mr. Zeevering's will had no residuary clause. This is a provision in a will that disposes of property not expressly disposed of by other provisions of the will (such as the pickup truck and Maryland property). If there is no such clause and there are assets that are undesignated as to where they go, Pennsylvania's intestacy statute determines where they go. In Mr. Zeevering's case the \$217,000 was then split equally among the five children. This, of course, was after they spent a good deal of money fighting over the estate (no doubt much more than it would have cost Mr. Zeevering to properly prepare a will to correspond to his wishes).

Was this a simple mistake on Mr. Zeevering's part? Sure looks like it. Was it a costly one? Yes. Did his "stuff" go where and in a way he wanted? Apparently not. As the court said, "we do not know" what his intentions were. And, further, the court was not willing to determine what those intentions were "based on "supposition, guess, divination, apparent inequities, or conjecture."

Let these be good lessons for the procrastinators and the do-it-yourselfers. Decide to do something now! Sketch/write out a simple plan of action/asset distribution with which you are comfortable, pick the executor(s) you trust to carry out your wishes and schedule a meeting with an elder law/estate planning attorney to discuss your goals and expectations in order to prepare a will that will carry out your wishes. Then, review your will on an annual basis as things can and do change to help insure that you're still comfortable with your plan.

Just remember the old Slovenian proverbs: "Where there's a Will (done properly), there's a way" and "Where there's no Will, there may be lots of relatives."?

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