

## What Happens to My Arkansas Property if I Do Not Have a Will?



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Estate planning is important no matter the size of your estate. Properly planning your estate will allow you to be in control of who inherits your assets, who raises your children, and who is in charge of administering your estate. Without an estate plan your assets will pass according to Arkansas law and the court will appoint individuals to raise your children and administer your estate. Estate planning puts you in control.

There are several different ways property can pass at your death. Property held jointly with right of survivorship between two or more parties passes to the surviving owners upon a party's death. Often, married couples hold bank accounts, homes, cars and other assets jointly, and these will all pass, automatically by operation of law and immediately, upon the death of one spouse to the other. Property can also transfer according to beneficiary designation. A beneficiary designation requires you to complete documentation with the company or individual administering the asset and specifies who should receive the asset upon your death. Common assets that have beneficiary designations include retirement accounts and life insurance policies. Beneficiary designations are often also available on bank accounts, stock accounts, cds, and other assets. But what happens to property that is owned in your individual name when there is no joint owner and no beneficiary designation. This property will pass according to the directions in your Will. However, if you do not have a Will, state law will determine how the assets will be transferred.

In Arkansas, if you die with assets in your individual name and without a Will and you leave a surviving spouse and surviving children, your assets will be divided between them. Your spouse is entitled to one-third (1/3) of any personal property and your children entitled to two-thirds (2/3). Personal property is generally defined as every thing that is not considered part of real property. Thus, your furniture, jewelry, cash, stocks, bonds, cars, etc. are all considered personal property. In regards to real property, your surviving spouse would be entitled to one-third (1/3) of all real estate, for his or her remaining lifetime. Your children would be entitled to the other two-thirds (2/3) and receive the surviving spouse's one-third (1/3) at the spouse's later death. In addition your spouse may be entitled to homestead rights, allowances for sustenance for two months and allowances for personal property, furniture, furnishings and appliances. However, as you can see the bulk of the assets will pass to your children. This occurs regardless of the age of your children or how long you have been married to your spouse. The assets passing to your children would be divided equally among the children, again not taking into account their age, financial needs or station in life. In addition, under Arkansas law only your biological or adopted children will be entitled to inherit from you. If you want step-children or foster children to inherit then you must have a Will that provides they are to inherit assets from you.

If you have no children, but have not been married to your spouse for more than three years, then your spouse is only entitled to fifty percent (50%) of your property and the remaining fifty percent (50%) will pass to your parents, or if none then to your siblings. If you pass without a spouse or children, all of your property will pass to your parents, or if none then to your siblings. If you have no siblings then your estate may end up with more remote relatives such as nieces, nephews, or cousins.

As you can see from the above examples, the way your individual property would pass at your death if you do not have a Will may not be how you would actually like your property to pass. Thus, estate planning, no matter the size of your estate, makes sure that you get to choose who benefits from your property after your death and not the state.