What Happens If Someone Passes Away Without a Will in Massachusetts?

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By Thomas J. Cleary on March 18, 2026

Not everyone takes the time to create an estate plan, so what happens if someone passes away without a will in Massachusetts? In this blog, a Massachusetts estate planning attorney from Cohen Cleary, P.C. explores how to best protect your family once you are gone.

Understanding Massachusetts Intestate Succession

The term "intestate" refers to dying without a will, and it puts your estate under Massachusetts intestacy laws. These allow the Commonwealth to direct the transfer of assets and funds when someone dies without a will or estate plan, leaving your family at the mercy of the laws.

Who Inherits If Someone Dies Without a Will in Massachusetts?

Massachusetts law divides property between spouses, children, and other surviving family members if there is no will. According to an intestacy chart provided by the MA government, the order is as follows.

When There Is a Surviving Spouse and Children

If all children are offspring of the surviving spouse and the decedent, the spouse inherits everything. If there are children of the decedent or the spouse from previous relationships, then the spouse and those children share the estate. This includes descendants of children who died before the decedent.

When There Is a Spouse but No Children

If there are no children but one or both of the decedent's parents are still alive, the surviving spouse divides the estate with those individuals. Otherwise, the spouse inherits everything if the decedent left no living parents.

When There Are Children but No Spouse

Only the deceased's surviving children inherit. This can also include descendants of the decedent's children who have already passed away.

When There Is No Spouse or Children

If there are no children and no spouse, the deceased's living parents will inherit the estate. If the parents are no longer alive, then any surviving siblings will share the assets. Past that, any next of kin will inherit according to Part II, Title II, Chapter 190B, Article II, Section 2-103(4).

When No Family Can Be Located

When a person dies without a will and has no identifiable family members, the estate goes to the Commonwealth. However, if the deceased was a veteran, their assets become property of

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the Massachusetts long-term care homes for veterans, under Part II, Title II, Chapter 190B, Article II, Section 2-105.

What Happens to Minor Children if There Is No Will?

Under Massachusetts General Law Chapter 190-B Title V, the Commonwealth will appoint a guardian for any minor children if the decedent left no will or did not name a guardian. Any surviving family member can apply to serve as a guardian, but there is no guarantee the court will accept their petition.

What's Included in an Intestate Estate in Massachusetts?

Under Part II, Title II, Chapter 190B, Article II, Section 2-101, any property that isn't expressly disposed of in a will passes according to the intestacy order described above. This includes all real estate, vehicles, money, and personal items.

Common Challenges When Someone Dies Without a Will

Although the law is clear, some potential heirs may dispute the order of distribution under intestacy. This could lead to delays in receiving assets, including legal action by heirs, someone claiming you left verbal instructions that conflict with intestacy laws, or presenting an unverified will.

Dying without a will means your assets may not be transferred to the people you intended to receive them. Without a will that names guardians for your minor children, they could go to individuals you wouldn't choose.

How the Probate Process Works in Massachusetts When No Will Exists

If there is no will, intestate succession laws require that your estate pass through a formal probate process to determine who will inherit and in what order. Here are some aspects of that process:

- Each claimant must present documents indicating their valid claim as spouse, child, parent, or sibling.
- The court will appoint a personal representative to manage your estate.
- The court will assign a guardian for your minor children.
- All assets are distributed, with the exception of life insurance proceeds if you named a beneficiary for those policies.

Leaving everything to the state is a gamble most people would not choose. If you and your spouse weren't married at the time of your death, they will not inherit, since Massachusetts doesn't recognize common-law marriages. As a result, your children with that partner may also be left without an inheritance if children of a previous legal marriage come forward.

Finally, you lose the ability to name your desired guardian for any minor offspring without a formal will. If you don't have anyone who could take your children, you have the option of

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naming an experienced attorney as guardian, conservator, or even executor for your estate if you take the time to write a will.

Contact an Experienced Estate Planning or Probate Lawyer Today!

If you're considering whether you need a will, the answer is probably yes. With a will and an estate plan, fewer property passes through probate, and your assets go where you want them, without government intervention. You get peace of mind knowing that those you love will receive the resources to help them move on without you when you're gone.

To understand how the law works for those with a will and those without one, contact us today to arrange a consultation with our Massachusetts estate law attorneys at Cohen Cleary, P.C. We can help you create the right set of estate planning instruments to meet your needs and those of your heirs. We will tailor the process to your goals and make it as stress-free as possible.

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