



# ESTATE PLANNING: YOUR WAY *or* THE STATE'S WAY?

Carla Little, Esq.

**Whom would you choose if you had to pick someone to decide how to distribute your assets when you die?** You'd probably choose a close relative, or maybe a trusted friend. Most likely, your first choice would not be the government official who drafted your state's intestacy statutes (the laws that dictate what happens to the assets of someone who passes away without an estate plan). Unfortunately, that's exactly who the decision maker is for those who die without estate plans, also called dying "intestate."

You may think the biggest concern about dying intestate is confusion about where your assets will go. However, a bigger concern may be that the law dictates where they should go, but that those distributions won't align with your wishes or your heirs' best interests. Here are a few examples of problems that can arise when the intestacy statutes determine distributions:


- A person whom you would not wish to distribute to, such as an estranged relative, is legally entitled to receive a distribution.
- Individuals you would like to provide for could be accidentally disinherited if they don't have a close enough blood relation (stepchildren who are not legally adopted, for example).
- A person who cannot safely or responsibly handle funds receives a distribution with no conditions and uses it to fuel a harmful lifestyle.
- A person who is receiving public benefits receives a distribution that disrupts their eligibility for needed benefits.
- Relatives of the same level receive equal distributions, with no consideration for differing needs or circumstances.
- Although the law indicates the shares certain relatives should get, it gives no instruction on how these shares should be created, so there could be disputes over who gets what specific property.
- The statutes will not provide for any distributions to charitable organizations that are important to you.

If you don't want to let your state write your estate plan, you can take control by designing an estate plan of your own.

Let's look at another aspect of following the state's "estate plan" rather than your own: the missed opportunity to nominate the best person to handle your estate.

The personal representative, or executor of an estate, is the person who is legally appointed to collect a deceased person's assets, pay valid debts and taxes, sell assets if needed, and finally, distribute the assets according to the will (or when there is no will, the law). In most states, whoever is nominated in a will has the first right to serve as the personal representative of the estate, no matter what their relationship to the deceased person was. When there is no will, the laws set out an order of priority based on relationships and other factors.

Relying on the law could result in conflict among people with equal rights to appointment (such as children who all have an equal right). It could also mean that the person who ends up in charge is not the most qualified for the job. An overwhelmed spouse or a less-than-capable sibling could find themselves in the role when a financially savvy cousin, friend, or in-law, who would not have priority for appointment under the law, would have been a better choice.

Your surviving relatives may, in some circumstances, be able to agree on the best person to serve, but things are much clearer and easier when your wishes are legally recorded—one more reason to take charge of your own plan rather than leaving decisions to the law. 

*To take the first step, please contact the Legacy Giving Team at (205) 271-4522 or [legacygiving@ewtn.com](mailto:legacygiving@ewtn.com) for a no cost, no obligation consultation.*



*Carla D. Little, Esq. is an Estate Planning Attorney in Centennial, CO. She earned her Law Degree from The University of Denver and has her L.L.M. in Estate Planning and Elder Law. Carla has been practicing Estate Planning for more than a decade. She has a wide and varied practice base and has a passion for Estate Planning and designing legacies for end-of-life issues. Carla also provides services in Elder Law, Business Formation, Probate, and advanced Estate Planning.*