

# Estates Advisory

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## Don't Be a Prince and Die Without a Will

by Leena Ketkar

Prince died without a will, leaving much confusion and chaos surrounding his estate, estimated by Forbes to be between \$150 million and \$300 million. While the battle over his estate is just beginning, the lessons to be learned from his mistake are already apparent.

A will gives you final control over your assets. It is a common misconception that the surviving spouse will inherit all assets if a spouse dies without executing a will. In Pennsylvania, a person who dies without a will is said to have died "intestate." Certain rules, called the Laws of Intestate Succession, govern what happens when a person dies intestate. Under these laws, if a person dies intestate with a surviving spouse and no surviving parents or descendants, the spouse will inherit everything in the intestate estate. However, if a person who dies has a spouse and surviving parents, for example, the spouse will inherit the first \$30,000 of the estate plus one-half of the remaining balance, and the parents will inherit the rest. This disposition of assets might come as a big surprise to surviving family members and might not reflect the decedent's intentions. For these reasons and more, the intestacy laws should not be relied upon for estate planning.

While Prince did not have any known children, due to the alleged size of his estate and his celebrity status, it would not be surprising to see people come forward claiming to be his child or the parent of his child. Under the intestacy laws, if Prince had any children, they would receive 100 percent of his estate. If any of those children are minors, court-appointed guardians would be required to administer the assets until the minor-aged children attain the age of majority. This scenario can be avoided through a will that includes trust provisions to hold assets for younger beneficiaries.

A will also allows you to designate a guardian of your choosing to care for your minor children and their assets. Moreover, it is not uncommon for a parent to specify in their will not only whom they want to care for their minor child, but also where they want their child to live, and in what manner and lifestyle they want their child to be raised.

In addition to appointing a guardian for your minor children, having a will allows you (rather than a court) to designate an executor and trustee to carry out your last wishes. In Prince's case, a court had to intervene and designate a special administrator (a trust company) to handle his affairs. Designating an executor you trust to wrap up your affairs is important, and can only be done in a will.

Having a will also allows for tax-planning opportunities to reduce or eliminate death taxes paid upon the death of the first spouse to die. In Pennsylvania, if you rely on the intestacy laws and die with a surviving spouse and children, you will subject your estate to the Pennsylvania inheritance tax at a rate of 4.5 percent for assets passing to the children. However, if you have a will and leave all of your assets to the surviving spouse, no Pennsylvania inheritance tax will be incurred as a result of that transfer. For larger estates potentially exposed to the federal estate tax (at a rate of 40 percent), a will can be used to plan for the proper use of the applicable



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exclusion amount (\$5.45 million per individual in 2016) and the unlimited marital deduction to defer any federal estate tax until the death of the second spouse. Before Prince's estate can be distributed to his heirs, it must fulfill its estate tax obligations, which on an estate valued at \$300 million would be over \$100 million. Prince's estate tax obligations could have been drastically reduced, or even avoided, with sophisticated estate planning, or, at the very least, a will.

In addition to a will, basic estate planning documents also include a financial power of attorney, a health care power of attorney and an advance health care directive. These documents help you plan for incapacity by naming an agent/surrogate to make decisions on your behalf, should you be unable to do so.

While Prince's Little Red Corvette might go by the way of the intestate laws, yours does not need to suffer the same fate. Please contact us to make sure all of your estate planning documents are in place and up to date, so your assets can be handled in the manner you wish and by the people you choose.

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