

# My Father Died Without A Will. Is This Going To Create A Family Feud?

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***Dear Ask the Attorney:***

***My father passed away recently without leaving a will. While he wasn't wealthy, he did have a retirement account, a house with no mortgage, and some civil war collectibles which have never been appraised, but the family believes may be worth a lot of money. My mother has been dead for years, so it is my father's brother (my uncle) and the three of us adult "kids" (my younger sister, my brother and myself, the eldest) who are left. What happens now? How do we avoid a serious fight for his assets.***

***Grieving Eldest Daughter***

Dear Grieving Daughter:

Our deepest sympathies for your loss; it is never easy to lose a loved one, particularly a parent.

When a person dies without a will, his estate is distributed to his heirs based on what are known as the *laws of intestacy*. Though the intestacy laws are different in each state, in New Jersey, if there is no surviving spouse, but all of the children are living, the estate is divided into equal shares, one for each child. In your case, your mother is deceased and the three children are living, so your father's estate would be divided into three equal shares, one for each child.

You mentioned your uncle in your question. Under the laws of intestacy, neither he nor his children would have any interest in your father's estate.

You also mentioned that you are the oldest child. Being the oldest does not have any bearing on the estate under the laws of intestacy. However, your family will need to determine who it would like to serve as the administrator of the estate. An administrator is basically the executor (or person in charge) of the estate; it just has a different name because the estate is not governed by a Will. Once you determine who you would like to serve as administrator, that person should visit the Surrogate's Office in the county where your father resided when he died. An attorney or most of the Surrogate's Offices can help guide you through the process.

One issue you may encounter is that the Surrogate will require the administrator to obtain a bond, which may be costly. The bond acts as an insurance policy for the estate, ensuring that the administrator will carry out her duties responsibly. Though the bond requirement can be avoided with a properly drafted Will, intestate estates are generally subject to the requirement. If you run into any issues during the process, the Surrogate's Office, as well as an attorney well versed in Trusts and Estates, can be very helpful resources.

This is why having a will, regardless of the size of the estate, is important; so that you can determine where you want your assets to go after death and who should administer your estate.