

THE PERILS OF DYING WITHOUT A WILL

By Vance Parker, JD, MBA

Tennessee Titans quarterback Steve McNair, age 36, was unexpectedly found murdered in a Nashville, TN hotel room on July 4, 2009. McNair had earned about \$90 million during his NFL career, yet he died without a will, or intestate. Because he had done no estate planning, his family lost millions of dollars to taxes and legal fees.

Estate planners strongly recommend that every adult who owns property or who has minor children should maintain valid estate planning documents, including a will. Yet every year thousands of North Carolina adults die intestate.

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probate court's application of North Carolina's intestate succession statutes.

FIGHTING AND EXPENSIVE LAWSUITS

If the deceased person's (decedent's) intent was never expressed in a will, potential heirs and others seeking part of the estate often argue about what the deceased really intended. Those disputes may lead to expensive litigation.

Because the intestate succession statutes deal mainly in percentages and do not address individual items of personal property, family members may fight over who gets certain family heirlooms or individual items of value.

Where infighting leads to litigation, the potential heirs may spend many times more in legal fees than what a proper will (which could have prevented the arguments) would have cost the decedent.

NC INTESTATE SUCCESSION LAWS

In North Carolina, when the probate court addresses an estate where the property owner died intestate, the court looks to the North Carolina intestate succession laws to help divide up the deceased person's property. Unfortunately, the probate court often will make different decisions than the deceased would have made had he or she made a will.

Under North Carolina intestate succession law, typically only spouses and genetic relatives inherit. Unmarried partners, friends, and charities get nothing.

REMAINING PROBLEMS

Dying without a will may create many problems not addressed by the

A COURT DECIDES WHO GETS THE CHILDREN

Parents who plan use a will to name their choice of guardians for their children. Courts normally uphold the parents' choice for their children's guardians as named in a will. But where there is no will and both parents die intestate, guardians will be appointed for the children by a court. This is a result that no parent intended.

HIGHER FEES, TAXES, AND LEGAL COSTS

Proper estate planning helps minimize probate fees, taxes, and legal costs. The goal of all legal planning should be to prevent problems. Preventing problems is always less expensive than paying to clean up a mess later, and is more predictable and less harrowing for the family.

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Sources:

- ♦ A.L. Kennedy, *Statistics on Last Wills & Testaments*, Demand Media, <http://info.legalzoom.com/statistics-last-wills-testaments-3947.html>
- ♦ *A Look at Last Wills & Testaments*, The Virtual Attorney, <http://thevirtualattorney.com/blog/shocking-statistical-look-estate-planning-infographic>.
- ♦ Clark Wilson LLP, *10 Problems with Dying Intestate*, <http://www.cwilson.com/resource/newsletters/article/297-10-problems-with-dying-intestate.html>.

- ♦ *Legal Consequences of Dying Without a Will*, Lawyers.com, <http://wills-probate.lawyers.com/wills-probate/legal-consequences-of-dying-without-a-will.html>.
- ♦ Mary Randolph, J.D., *How an Estate is Settled if There's No Will: Intestate Succession*, Nolo, <http://www.nolo.com/legal-encyclopedia/how-estate-settled-if-theres-32442.html>.