What happens if I don’t have a will?

Farm & Family: Minnesota laws are very clear about how someone’s estate would be divided if no will was made — and the state is way down on the list.

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Does the state of Minnesota get my property if I do not have a will?”

We are sometimes asked that question. Though there are many variables of what could happen with your property, if you do not have a will, it is unlikely that the state would become the beneficiary of your estate.

Classification of assets

After a person dies when administering his or her estate, the assets are broken up into two categories: nonprobate assets and probate assets. The decedent’s assets are placed into these categories based on the manner in which the asset is owned and whether there is a named beneficiary for the asset.

Nonprobate assets

There are many types of nonprobate assets. These include assets held in a revocable living trust, assets that are jointly owned and assets that have named beneficiaries. The decedent does not need a will to determine who receives these assets after his or her death. Rather, if held in trust, the asset will be distributed to the beneficiary of the trust. If the asset is jointly owned, it will pass to the surviving joint owner. If there is a named beneficiary, it will be transferred to the beneficiary.

Probate assets

Probate assets are those that are owned by the decedent individually and have no named death beneficiary. After the decedent’s death, probate assets are distributed according to the terms of the decedent’s will; or if the decedent does not have a will, then according to the intestate laws provided by Minnesota Statute Sections 524.2-101 to 524.2-122.

Intestate distributions

When the decedent does not have a will, it is said that the decedent has an intestate estate. The intestate estate includes all probate assets that are not allowed to the decedent’s spouse or descendants as homestead property, exempt property or family allowance, as provided by Minnesota Statute Sections 524.2-402 to 524.2-404. The intestate estate assets pass to the decedent’s heirs according the intestacy laws as follows:

The decedent’s surviving spouse will receive the entire probate estate if the decedent has no surviving descendants.

• If the decedent has surviving descendants but these are all descendants of the surviving spouse, then the surviving spouse will receive the entire probate estate.

• If the decedent has descendants who are not descendants of the surviving spouse, or if the surviving spouse has descendants who are not descendants of the decedent, the surviving spouse will receive the first $225,000 of the probate assets and half of all remaining probate assets.

• All probate assets not distributed to the surviving spouse will go the decedent’s descendants by representation. If the decedent’s descendants are deceased, the deceased descendant’s share will be distributed to their descendants. This means the distribution could go to the decedent’s children, grandchildren or great-grandchildren, depending on who survives.

•\* If the decedent does not have a spouse or descendants, the probate estate is distributed to the decedent’s parents equally if both are alive, or to the surviving parent.

• If the decedent has no surviving spouse, descendants or parents, the probate estate is distributed to the parents’ descendants by representation. This means the distribution could go to the decedent’s parents, siblings, nieces or nephews, depending on who survives.

• If the decedent has no surviving descendants, parents or descendants of parents, then if one or more grandparents or descendants of grandparents survive the decedent: Half is distributed to the maternal grandparents equally if both survive, or to the surviving maternal grandparent. If the maternal grandparents are deceased, then it passes to the descendants of the maternal grandparents by representation; and half is distributed to the paternal grandparents equally if both survive, or to the surviving paternal grandparent. If the paternal grandparents are deceased, then it passes to the descendants of the paternal grandparents by representation. This means the distribution could go to the decedent’s grandparents, aunts, uncles or cousins, depending on who survives.

• If the decedent has no surviving descendants, parents, descendants of parents, grandparents or descendants of grandparents, then the probate estate is distributed to the closest next of kin.

• If there is no one who qualifies under these provisions, then the probate assets pass to the state of Minnesota.

As you can see, there are many options of what could happen. However, it is safe to say it is unlikely that the state of Minnesota would become a beneficiary of the probate estate, since the law provides so many opportunities to find even a distant relative of the decedent who would inherit.