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TOP 10 CONSEQUENCES OF NOT HAVING A WILL

By Darren M. Baldo, Esq., LL.M.

1. **Guardian of Minor Children.** If you die without a will, then the court will determine from your child's closest next of kin to have the first right to serve as guardian but it's not automatic. Someone else may step forward to apply for guardianship as well. Thus, unless you appoint a guardian in your will, your child could end up with someone you do not prefer to be the guardian of your child. Also, the court must be involved to take care and custody of your minor children until a guardian is appointed. Moreover, guardianship can be an expensive and time-consuming proceeding.
2. **Executor.** Without a will, you do not have anyone to step in to administer your estate as a matter of right. Instead, an administrator must be appointed by the court to administer your estate, which can be challenged by another person who also wants to be administrator. Thus, the appointment of an administrator can result in added delay, expense, frustration and possible loss. The principal duties of the executor or administrator are to: inventory and collect assets of the decedent; manage and preserve for the assets during administration; receive and pay taxes and debts of the estate; and distribute the remaining assets to those entitled under the terms of the will. Thus, it's important to choose someone you trust to administer your estate through your will.
3. **Property.** Without a will, the intestate succession rules apply to dispose of your assets. Your children and other people may not receive the amount you wanted them to receive. Without a will, your estate may go to a relative that you may have never spoken to, or don't even like. Also, without a will, you cannot designate any charities to receive any part of your estate.
4. **Tax Savings.** Without a will, you are unable to take advantage of certain tax savings techniques that exist in a properly devised estate plan using any number of trusts in your wills, e.g., credit shelter trust. The maximum federal estate tax rate is currently 40%. New Jersey and Maryland are the only states that have both an estate tax and an inheritance tax. The maximum rates of the estate and inheritance taxes are both at 16%.
5. **Assets of Minors.** Without a will or a trust previously created prior to your death, your children would be entitled to receive all of the money when they reach the age of majority, which in New Jersey is 18 years of age. While they're minors, the court will appoint a

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trustee and/or guardian to administer your child's share of the funds distributable from your estate for their health, education, maintenance and support. But once they turn 18 years old, they can do whatever they want with their share.

6. **Unmarried Partners.** Common law relationships are not recognized in New Jersey. Thus, without a will, your significant-other may not receive anything from your estate upon your death if you were not married by that time.
7. **No Skip Generations.** Without a will, the estate will pass automatically to the next living generation of people in your family rather than skipping generations. Thus, if you want your estate to go directly to grandchildren, you will need a will.
8. **Special Assets.** Without a will, a beach-house, a family heirloom or a piece of artwork that you would want someone to have would not have any right to receive it. Rather all property would be treated together as part of the estate and would be distributed to the beneficiaries under the laws of intestate succession, which could result in multiple people together owning such beach-house, family heirloom or piece of artwork and consequently require a sale or judicial proceeding for the disposition of all such property, thereby causing greater expense and strife for the estate beneficiaries.
9. **Business Succession.** Without a will, a family business or heirloom may not be able to stay in your family or pass directly to a desired person, and it may be necessary to liquidate the assets due to infighting and tax liabilities. When there is something of significant value like a business, it is so important to plan ahead to avoid potential conflicts.
10. **Burial.** Without a will, there is no opportunity to provide for burial preferences or instructions. You may want to be cremated or have certain non-traditional burial arrangements carried out after your demise.

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**INTESTACY LAWS OF DISTRIBUTION
UNDER NEW JERSEY STATUTES***

By Darren M. Baldo, Esq., LL.M.

IF YOU DIE WITH:	THEN HERE'S WHAT HAPPENS:
• children but no spouse:	• children inherit everything equally.
• spouse but no descendants or parents:	• spouse inherits everything.
• spouse and descendants from you and that spouse, and the spouse has no other descendants:	• spouse inherits everything.
• spouse and descendants from you and that spouse, and the spouse has descendants from another relationship:	<ul style="list-style-type: none">• spouse inherits the first 25% of your intestate property (but not less than \$50,000 or more than \$200,000), plus 1/2 of the balance• your descendants inherit remaining 1/2 balance equally.
• spouse and descendants from you but one or more descendants are not a descendant of the surviving spouse:	<ul style="list-style-type: none">• spouse inherits the first 25% of your intestate property (but not less than \$50,000 or more than \$200,000), plus 1/2 of the balance• your descendants inherit remaining 1/2 balance equally.
• spouse and parents:	<ul style="list-style-type: none">• spouse inherits the first 25% of your intestate property (but not less than \$50,000 or more than \$200,000), plus 3/4 of the balance• parents inherit remaining 1/4 balance equally.
• parents but no spouse or descendants:	• parents inherit everything equally.
• siblings but no spouse, descendants, or parents:	• siblings inherit everything equally.

* See N.J.S. §§ 3B:5-3 and 3B:5-4.