

You know you should have a will, but why?

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Are you among the two-thirds of Americans without a will? You probably realize you aren't alone and that others, even many wealthy celebrities – such as Prince, Howard Hughes and Sonny Bono – have died without a will.

Unfortunately, according to recent national surveys, including one done by care.com, the pandemic did not move the needle on these statistics. A deeper dive into the data shows that the older one is, the more likely one is to have a will. This is not surprising because a will is something those in their 20s and 30s are less likely to think about. Of course, those with higher incomes and higher levels of formal education are more likely to have a will. The survey further revealed that if you are Black or Hispanic, you are less likely to have a will than someone who is white.

Nearly everyone, including those surveyed, recognized that people should have a will. But do you understand why you should have a will? Do you realize that if you die without a will, your heirs and your personal representative is determined by state statutes? Do you really want the state legislature to dictate what happens to your accumulated wealth and the person in charge of doing this?

Heirs are your spouse, if there is one, and blood relatives. Those closer to you, by blood, are more likely to inherit. However, there are many disadvantages associated with allowing the statutes to control the distribution of your estate. These statutes are outdated and fail to consider blended families or relationships, as heirs are those related by blood. In the rare case of no blood relatives, stepchildren are a last resort prior to assets passing to either the state health department or the local board of education. Additionally, the statutes do not manage money or appoint a guardian for minor children. Without a will the designation of a guardian for your children requires a legal procedure that is costly, time consuming, and likely to involve litigation among family members.

Why do most people fail to prepare a will? Procrastination is the primary reason among those surveyed. Other excuses mentioned include not having enough assets to pass down, or not wanting to think about death. Others stated that the expected cost contributed to them dropping the ball.

So, what can be done to remedy this dilemma? Encouraging people to contact an attorney is the obvious solution. But this suggestion will do nothing to encourage procrastinators. Perhaps we should make doing a will easier by encouraging valid “do-it-yourself” or “holographic” wills? Television personality Larry King recently died with a holographic will. However, in California, holographic wills are more widely recognized as valid. In Maryland, holographic wills are reserved for those in the armed forces and void one year after discharge.

Should there be an increased use of electronic wills and electronic signatures, like those used in real estate contracts? For those who prefer a personal experience, would some increased access of free legal service clinics help? Would more people do wills if it were part of the employee benefits package? Would will preparation by nonlawyer professionals such as accountants or financial planners as an ancillary service encourage more people to do wills? People should make wishes known and appoint guardians by having a will. Meanwhile, if you happen to be in the category of Americans without a will, do your part by getting it done! Make it your New Year's resolution.