

# ASK THE ADVISERS

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## When You Don't Need A Will

The main function of a will is to direct the probate court how to retitle the assets of one's estate following their death. One misconception is that you need a will to avoid probate.

The reality is that all wills must go through the probate process for them to be validated. In Florida and most states if you die without a will, everything goes to your spouse and if you don't have a spouse everything goes to your kids. Therefore, if you make a will that leaves everything to your spouse and then to your kids, your will is simply duplicating the plan of distribution that the state already provided.

People who want to avoid probate can focus on how their assets are titled. Many assets automatically pass to one's beneficiaries at their death free of probate. Any assets owned jointly with a spouse will automatically pass to the survivor. Retirement accounts, annuities, and life insurance all have named beneficiaries that will automatically pass free of probate. Wills do not control these assets; beneficiary designations are used over the terms of one's will.

In other words, if your will leaves everything to your son but the beneficiary of your IRA is your daughter, your daughter will inherit the IRA. Your son will only inherit the assets that go through the probate process. If you can pass all assets free of probate, then you won't need a will.

Besides retirement accounts, most people have bank and brokerage accounts. Beneficiaries can be added to these types of accounts using transfer on death designations that your institution can help you with. The one remaining asset that needs to be disposed of will be a home or other real estate.

In Florida property owners can add beneficiaries to their real estate by using a Lady Bird deed. The owner retains control of the property but at their death the property will avoid probate and pass directly to the named beneficiaries. By titling assets properly probate can be avoided without a will, trust, or attorney's fees.

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