Spencer Law Group, LLC

Wills, Ways & Wisdom

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FLORIDA ESTATE, PROBATE & GUARDIANSHIP INSIGHTS

# You Already Have an Estate Plan. Florida Wrote It.

Here's a secret most people don't know: every Floridian already has an estate plan. If you never sign a will, a trust, or a single power of attorney, the State of Florida has written one for you. It's in Chapter 732 of the Florida Statutes.

The catch? Florida's plan was written by the Legislature, not by you. It doesn't know your stepson is like your own child. It has never met your sister who drove you to every doctor's appointment. It has no idea you promised the lake house to your granddaughter.

This month is National Estate Planning Awareness Week, October 19–25. So let's look at the plan Florida already wrote for you, and at how to take the pen back.

## 1. Florida's "default will": who inherits if you don't choose

When someone dies without a valid will, Florida law calls it dying **intestate**. The estate then passes by a set formula:

- **Married, and all your children are also your spouse's children (and your spouse has no other children):** your spouse inherits everything. *(Fla. Stat. § 732.102(1)–(2))*
- **Married, in a blended family:** if you have children from another relationship, or your spouse does, your spouse receives **one-half** and your descendants share the other half. *(Fla. Stat. § 732.102(3)–(4))*
- **Not married:** your estate goes to your descendants. If there are none, it goes to your parents, then your brothers and sisters, and then further out along the family tree. *(Fla. Stat. § 732.103)*

Notice who is missing from that list: stepchildren you never adopted, a longtime partner you never married, a best friend, your church, your favorite charity. Under Florida's plan, they receive nothing. The law isn't unkind here. It simply can't read your heart.

## 2. "But I downloaded a will online." A cautionary tale from the Florida Supreme Court

Ann Aldrich did what many of us would do. She filled out a pre-printed "E-Z Legal Form" will and carefully listed her assets. Years later she inherited cash and land from her sister. Her form had no **residuary clause**, the catch-all sentence that says "and everything else goes to…". So the new

property wasn't covered by her will at all. It passed by intestacy to relatives she hadn't chosen, and the family ended up in court all the way to the Florida Supreme Court.
*(Aldrich v. Basile, 136 So. 3d 530 (Fla. 2014))*

In her concurring opinion, Justice Pariente wrote that this unfortunate result

> *"stems not from this court's interpretation of Florida's probate law, but from the fact that Ms. Aldrich wrote her will using a commercially available form."*

The lesson isn't "never use a form." The lesson is that a will has to work for the life you'll have later, not only for the life you have today.

Florida is also strict about how a will is signed. You must sign at the end, in front of **two witnesses**, who also sign in your presence and in each other's presence. *(Fla. Stat. § 732.502)* A handwritten, unwitnessed "holographic" will, the kind that is valid in some other states, does not meet Florida's requirements.

## 3. The homestead twist nobody sees coming

Your Florida home is special, and the Florida Constitution protects it. If you are survived by a spouse or a minor child, **you generally cannot leave your homestead to anyone else in your will.** One exception: with no minor children, you may leave it to your spouse. *(Fla. Const. art. X, § 4(c); Fla. Stat. § 732.4015)*

If the homestead isn't left in a way the law allows, the statute takes over. Typically your spouse receives a life estate and your descendants receive the remainder. Your spouse may instead choose a one-half interest as a tenant in common, but only by making that election within a strict deadline. *(Fla. Stat. § 732.401)* Many families first learn about this rule at the worst possible moment.

## 4. Probate is not a four-letter word (it only has six)

Probate is the court-supervised process of gathering a person's assets, paying valid debts, and passing what's left to the right people. Florida has two main paths:

- **Formal administration:** a personal representative is appointed and handles the estate under the court's supervision. *(Fla. Stat. ch. 733)*
- **Summary administration:** a shorter process available when the will (if there is one) doesn't require formal administration, and either the Florida estate subject to administration, less property exempt from creditors' claims, is worth **$150,000 or less**, or the person has been deceased **more than two years**. The $150,000 limit applies when the death occurred on or after July 1, 2026; for earlier deaths, the prior $75,000 limit applies. *(Fla. Stat. § 735.201)*

Good planning doesn't always mean "avoiding probate at all costs." It means knowing which path your family will face, and making that path as smooth and short as possible.

## 5. The gap most plans miss: what if you're alive but can't decide?

An estate plan isn't only about death. What happens if a stroke, dementia, or a disease like Parkinson's takes away your ability to manage your money or your medical care?

Without planning, your family may have to ask a court to appoint a **guardian**. That process is public, it has ongoing reporting requirements, and it can take away some or all of your legal rights. Florida's Legislature has said guardianship should be the **least restrictive** option, and that alternatives should be explored first. *(Fla. Stat. § 744.1012)*

The best alternatives are documents you sign **now**, while you can:

- **Durable power of attorney:** lets a trusted person handle your finances, and it stays in effect even if you later become incapacitated. *(Fla. Stat. § 709.2104)*
- **Designation of health care surrogate:** names who can make medical decisions and receive your health information. It must be signed in front of two adult witnesses, and at least one of them cannot be your spouse or a blood relative. *(Fla. Stat. § 765.202)*
- **Preneed guardian designation:** if a guardianship ever does become necessary, this names who you want to serve. The court presumes that person is entitled to serve (a presumption that can be rebutted). *(Fla. Stat. § 744.3045)*

Think of these as a spare key you give to someone you trust, before you get locked out.

### Your October checklist

- ☐ Find your current will (or admit you don't have one; this is a judgment-free zone).
- ☐ Check that it has a residuary ("everything else") clause.
- ☐ Review the beneficiaries on your life insurance, retirement accounts, and bank accounts. They pass outside your will.
- ☐ If you own a Florida homestead, confirm that your plan follows the homestead rules.
- ☐ Sign, or update, your durable power of attorney and health care surrogate designation.
- ☐ Tell one trusted person where your documents are kept.

## The bottom line

You don't need a perfect plan. You need *your* plan, not Florida's. This month, take the pen back.

With warmth and respect,

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**Coming in November:** "Blended Families, Holiday Tables & Who Gets Grandma's Ring."

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