



# COOK & JAMES ATTORNEYS AT LAW



## WILLS & TRUSTS

Cook & James, LLC strongly urges everyone to have a will or other legal method set up to ensure that your property is distributed to the heirs of your selection. Furthermore, a will governs who will be the guardian for any minor children that you may have and to make healthcare decisions for you should you become incapacitated.

### IF YOU DIE WITHOUT A WILL IN GEORGIA

If you do not make a will or use some other legal method to transfer your property when you die, state law will determine what happens to your property. This process is called "intestate succession." Your property will be distributed to your relatives according to a statutory formula as follows:

- If you are married without children, your spouse will inherit your entire estate.
- If you are married with children, your spouse and children will share equally your estate with the spouse entitled to no less than one-third of your estate.
  - ♦ Example #1: if you have one child with your spouse, they each will receive 50% of your estate.
  - ♦ Example #2: if you have four children and a spouse, your spouse will receive 1/3rd of your estate and the four children will share equally the remaining 2/3rds
- If you are not married but have children, the children will inherit your estate, shared equally between them.
  - ♦ Please note that if a child of yours is deceased but has living children, those living children will inherit your deceased child's share. This is called distribution "per stirpes".
- If you do not have a spouse and do not have children, then your parents will inherit.
- If you do not have a spouse and do not have children and your parents are deceased, then your siblings will share equally your estate, per stirpes.
  - If there are no siblings, then your grandparents will share your estate equally.
  - If your grandparents are deceased, then your uncles and aunts will be entitled to your estate.
- If no relatives can be found to inherit your property,



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- your estate equally.
- If your grandparents are deceased, then your uncles and aunts will be entitled to your estate.
- If no relatives can be found to inherit your property, it will go into your state's coffers.

**Each state has specific rules of inheritance set forth by statute. The above listed formula is for Georgia, but it may be different in another state.**

Other factors for you to understand about Georgia intestate succession:

- Children born out of wedlock:  
A child born out of wedlock may inherit in the same manner as though legitimate from the child's mother. However, that same child is not entitled to inherit from the father unless certain steps are taken. Please see O.C.G.A. §53-2-3 for further details.
- Children conceived by artificial insemination-- are presumed to be legitimate and therefore, entitled to inherit under the laws of intestacy.
- If your spouse dies without a will, and then you die within six months of that time without a will, the property from your spouse that you would have received goes to your spouse's heirs, even though you outlived your spouse.

## HEALTH CARE POWER OF ATTORNEY

A Healthcare Power of Attorney permits you to select an agent to make critical decisions regarding your healthcare if you are incapacitated and cannot act for yourself. If you are in critical condition due to an accident or disease, your agent can communicate your desires to medical personnel to assure that your care reflects your intentions under the circumstances.

A Healthcare Power of Attorney is more extensive and replaces what historically has been called a Living Will. A Living Will is only operative if your ultimate recovery is hopeless, whereas a Healthcare Power of Attorney is also effective when your health is not so dire, yet you are unable to make your own decisions.

- ♦ A Healthcare Power of Attorney generally describes certain life prolonging treatments. You select which treatment you do or do not want applied in the event you are suffering from a terminal illness or are in a permanent vegetative state.

## FINANCIAL POWER OF ATTORNEY

A Financial Power of Attorney allows you to select an agent to act for you in the event you are incapacitated for any reason. For example, if you are hospitalized and physically cannot write checks to pay your monthly bills, your agent can keep your financial life in order until you have recuperated.



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