

# Knowledge is Power

*Learn how to:*

*Avoid probate—keep financial matters private and out of the public record*



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## Chief justice's will an example of how not to handle an estate

*Burger Leaves his heirs a legal tangle and astronomical tax bills*

By Richard Carelli  
Associated Press

Washington—Warren Burger, once the nation's highest ranking judge, prepared a "woefully" inadequate will before he died, and it could cost his heirs plenty. The legal tangle is a cautionary tale for those Americans who have avoided proper estate planning.

"This really is a sad example," said lawyer George W. Dodge in Arlington, Va. "Burger's estate of \$1.8 million may face federal and state taxes of over \$450,000. He possibly could have avoided all that.

Burger who served as the nation's chief justice longer than anyone this century, retired in 1986. He died last June at age 87.

Just after his wife died in 1994, Burger used a computer to type a one-page will leaving one-third of his estate to his daughter, Margaret, and two-thirds to his son, Wade.

It appears the ex-chief justice prepared the will hastily, not bothering to check his spelling.

The document named Wade Burger and J. Michael Luttig, a federal appellate judge and a former law clerk and special assistant to Burger, as executors but misspelled the designation once as "exeuctors."

More importantly, the document did not grant the executors any power to sell Burger's real estate. "That omission means they need a probate court's permission to dispose of the property. We're talking about unnecessary attorney fees and court costs," Dodge said.

In an article published in the Arlington County Bar Association Journal, Dodge called the will woefully inadequate.

The article noted that the will also failed to waive bond or surety, making it necessary to get a bonding company to insure the executors against any claims of negligence.

The will also does not appear to be "self-proving" under Virginia law, meaning that the two witnesses to Burger's signature could be required to testify in person that they did, indeed see him sign it.

"All these will, or could, add unnecessary costs," Dodge said.

Burger did not protect his heirs from estate taxes, Dodge, assisted by the accounting firm of Marry, Jonson, White & Associates, estimated the federal estate taxes may be as high as \$378,000 and Virginia's estate-tax bite as much as \$78,000.

"If proper estate planning measures had been taken, it's possible there would be no estate taxes due," Dodge said. "Through trusts and gifts, he possibly could have saved it all—and that's a huge chunk of money."

How much would such estate planning have cost Burger? Dodge said a large Virginia law firm probably would have charged Burger \$2,000.

Most Americans might not need such help because the federal estate tax exempts up to \$600,000 in assets and many state tax schemes mirror that exemption.

"But, virtually everyone needs a will," Dodge said. "It lets you control and direct where your assets go—to your spouse, children, charities."

# How property passes at death

**W**e've been asked many times to describe how property passes at the death of a person. Property passes in one of three ways:

**1. by will, or in the absence of a valid will, under your state's descent and distribution statute.**

**2. by contract, or**

**3. by right of survivorship.**

A decedent's interest in pension benefits, employer's death benefits, life insurance and annuities are examples of property passing by contract. Such property is not part of the probate estate.

A decedent's interest in a home, other real estate, savings and checking accounts and stocks and bonds which are owned with a survivorship right pass under the survivorship provision and, also, are not part of the probate estate.

A decedent's interest in property not named above usually passes under the will or descent and distribution statute. This is the portion of the estate subject to probate administration.



## ***Steps in probate administration***

Regardless of whether a person dies with or without a will, there are six steps in probate administration:

- 1) appointment of the executor or administrator by the probate or other county court,
- 2) notice to the estate creditors,
- 3) inventory and appraisal of assets,
- 4) managing the estate (paying estate debts, maintaining the probate property, fulfilling contracts, filing tax returns and preparing accountings for the county court),
- 5) distribution of assets, and
- 6) discharge of the executor or administrator by the county court.



Although an executor promptly makes the next filing or meets the next requirement of the law, it takes a minimum of six months to close an estate. States do have a short form administration process, but the probate assets must be less than a dollar amount specified in the same statute.

## ***Dying without a will***

While a decedent can't avoid probate administration with a will, the problems created by dying without a will are avoided.

First, without a will, the surviving spouse must share the probate estate with the decedent's children and, in many states, with the decedent's surviving parent in the case of a childless couple.

Secondly, while the surviving spouse may be named estate administrator by the county court, he or she will be required to post a performance bond.

Thirdly, if the spouse predeceases the decedent, the guardian of the minor children and the children's property is appointed by the county court.

Fourthly, should the surviving spouse remarry and not survive the subsequent spouse, the property may pass to persons outside the family.

Finally, there are certain legitimate avenues to lower death taxes which are not taken when a person dies intestate (without a valid will). Obviously, effective estate and tax planning begins with a will.

# Estates of famous people

*Estate settlement expenses can be very costly and are paid even by the rich and famous. The following examples are from public probate records of individuals who have died.*

## The following estates made use of the marital deduction:<sup>1</sup>

Name	Gross Estate	Settlement Cost	Net Estate	Shrinkage
Stan Laurel	\$91,562	\$8,381	\$83,181	9%
Goodwin Knight	102,049	21,585	80,464	21%
W.C. Fields	844,680	329,793	554,887	37%
Nelson Eddy	472,715	109,990	362,725	23%
Dixie Crosby	1,332,571	781,953	550,618	59%
Franklin D. Roosevelt	1,940,999	574,867	1,366,132	30%
Humphrey Bogart	910,146	274,234	635,912	30%
Clark Gable	2,806,526	1,101,308	1,705,488	30%
Dean Witter	7,451,055	1,830,717	5,620,338	25%
Henry J. Kaiser, Sr.	5,597,772	2,488,364	3,109,408	56%
Henry J. Kaiser, Jr.	55,910,373	1,030,415	54,879,958 <sup>2</sup>	2%
Al Jolson	4,385,143	1,349,066	3,036,007	31%
Gary Cooper	4,984,985	1,530,454	3,454,531	31%
Myford Irvine	13,445,552	6,012,685	7,432,867	45%
Walt Disney	23,004,851	6,811,943	16,192,908	30%
Harry M. Warner	8,946,618	2,308,444	6,638,174	26%
William E. Boeing	22,386,158	10,589,748	11,796,410	47%

## Estates where the marital deduction was not used or not available:

Name	Gross Estate	Settlement Cost	Net Estate	Shrinkage
William Frawley	\$92,446	\$45,814	\$46,632	49%
"Gabby" Hayes	111,327	21,963	89,364	20%
Hedda Hopper	472,661	165,982	306,679	35%
Marilyn Monroe	819,176	448,750	370,426	55%
Erle Stanley Gardner	1,795,092	636,705	1,158,387	35%
Cecil B. DeMille	4,043,607	1,396,064	2,647,543	35%
Elvis Presley	10,165,434	7,374,635	2,790,799	73%
J.P. Morgan	17,121,482	11,893,691	5,227,791	69%
John D. Rockefeller Sr.	26,905,182	17,124,988	9,780,194	64%
John D. Rockefeller Jr.	160,598,584	24,965,954	135,632,630 <sup>2</sup>	16%
Alwin C. Ernst, CPA	12,642,431	7,124,112	5,518,319	56%
Frederick Vanderbilt	76,838,530	42,846,112	33,992,418	56%

<sup>1</sup> Under current laws, the cost would be different. Under the Tax Act of 2001, the federal estate tax is gradually phased out until its final repeal in the year 2010. If Congress does not act at that time to repeal it for the years following, it will automatically revert back to the rates in effect during the year 2001, with the exemption for the first \$1,000,000 of assets.

<sup>2</sup> Over \$50,000,000 of Henry J. Kaiser Jr.'s estate went to the Kaiser Family Foundation. Most of the estate of John D. Rockefeller, Jr. went to the Rockefeller Brothers Fund, Inc.

# What did Junior do... that Papa didn't?



Henry Kaiser Sr.		Henry Kaiser Jr.	
\$5,597,772	Gross Estate	\$55,910,373	
2,488,364	Tax & Settlement Costs	1,030,415	
\$3,109,408	What was left	\$54,879,958	
56%	Shrinkage	2%	



John D. Rockefeller Sr.		John D. Rockefeller Jr.	
\$26,905,182	Gross Estate	\$160,598,584	
17,124,988	Tax & Settlement Costs	24,965,954	
9,780,194	What was left	135,632,630	
64%	Shrinkage	16%	

## What did this highly successful accountant fail to do?\*

The estate of Alwin Ernst, CPA. Founder of one of the worlds largest accounting firms, was literally cut in half by taxes and settlement costs.

Gross Estate	\$12,642,431
Tax & Settlement Costs	7,124,112
What was left	5,518,319
Shrinkage	56%

## J.P. Morgan info & figures

Although he single-handedly put together the financing for railroads, oil exploration, and steel at the turn of the 19th century, literally financing the western expansion of the United States, and became banker to the richest families in America, J.P. Morgan could have saved millions for his own family if he had done one thing.\*

Gross Estate	\$17,121,48
Tax & Settlement Costs	11,893,691
What was left	5,227,791
Shrinkage	69%

## In itself, having a larger estate is not the answer.

Compare the estate of Frederick Vanderbilt to the estate of Henry Kaiser Jr. (Vanderbilt starts out 21 million dollars ahead of Kaiser Jr., but ends up \$21 million behind)

Frederick Vanderbilt		Henry Kaiser Jr.	
\$76,838,530	Gross Estate	\$55,910,873	
42,846,112	Tax & Settlement Costs	1,030,415	
33,992,418	What was left	\$54,879,958	

Today, regardless of the size of their nest eggs, what must people do to protect their assets?\*



**Answer: Plan Ahead\***

If you or someone you know would benefit from a better understanding of this subject, please talk with the person who brought you this information

# Naming beneficiaries

**N**aming beneficiaries may seem like the simplest part of completing a life or annuity application, but beware!

If you name your estate as the beneficiary, the proceeds will become a part of probate. The insurance company could require additional information and forms (legal identification of the executor, proof that the executor has the right to file a claim, etc.) Naming specific beneficiaries or a trust would be a better choice.

## ***If you name a Trust.***

This choice works well, but remember to give the full name of the trust, the date the trust was enacted, and its tax identification number. It's a good idea to include a copy of the trust when you submit the application. With the trust on file, the insurance company will have the additional information it needs to process a claim.

## ***If you name:***

### ***“My children to share equally.”***

In this case if a child predeceases you, and no beneficiary change is made, the proceeds will be divided only among the surviving children. Nothing would be paid to the dependents of the deceased child. This is the method selected by many policy holders, only because they do not realize that a deceased child's heirs will receive nothing.

### ***If you name: “My children to share equally Per Stirpes.”***

Per Stirpes—from the Latin meaning “through the root.” In this case if a child predeceases you, and no beneficiary change is made, the proceeds will be divided equally between all the children with the deceased child's share being divided between his/her children. This is the method preferred by most policy holders.



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*If you have any questions, or require help reviewing beneficiary information, please call the agent who provided you with this information.*

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## ***Note:***

Always be sure to review beneficiary information with your insurance agent when a divorce, death, or birth occurs. Have your agent review this information on “all” of your policies, don't forget to review and make necessary changes to employer provided policies. You will save your family a lot of heartaches by ensuring that all beneficiaries are properly indicated. When a divorce occurs you and your agent should seek the advice of your legal advisors to determine appropriate changes to beneficiary designations.