

Can I bring a wrongful death claim if my loved one died without a will?

When a person passes away due to someone else's negligence, their surviving loved ones may be entitled to compensation through an Illinois wrongful death claim. This is true even if the deceased did not have a will in place — while the absence of a will can complicate matters, it does not automatically invalidate the claim.

The role of a will in the filing of wrongful death claims

A will is a legal document that outlines a person's wishes regarding the distribution of their assets upon death. In this document, a person may select an executor, or personal representative, to handle the distribution of their property. They may also name beneficiaries who will receive these assets.

Under the [Illinois Wrongful Death Act](#), all wrongful death claims must be filed by the personal representative of the deceased's estate. When the deceased has a will, determining who this will be is simple — the executor named in the document will be responsible for filing the claim.

If there is no will in place, the court will appoint a close relative, such as the deceased's surviving spouse, child, or parent, to act in this capacity. The ability of the court to appoint a personal representative is the reason why a will isn't necessary to file a wrongful death claim.

Will vs. no will in the distribution of damages

The goal of a traditional wrongful death claim is to recover compensation for the losses, or damages, suffered by the deceased person's surviving family members as a result of the death. Potential damages in a wrongful death claim include funeral and burial costs, loss of companionship, loss of financial support, and grief and mental suffering.

When the personal representative files a wrongful death claim, they are doing so on behalf of the deceased's surviving loved ones, who will then receive any compensation obtained. This is where the presence or absence of a will can make a major difference.

If the deceased died with a valid will, the surviving spouse and the beneficiaries named in the document will be eligible to receive a portion of the damages recovered. The beneficiaries may be anyone chosen by the deceased, including non-relatives or distant relatives. If the deceased did not have a will, the distribution of damages will follow the rules of intestate succession under the [Illinois Probate Act](#).

Intestate succession in Illinois

Intestate succession establishes an order of priority for the distribution of assets when there is no will in place. Generally, the deceased's spouse and descendants, including children and grandchildren, have priority.

If the deceased has a surviving spouse but no descendants, all of the damages will go to the surviving spouse. If the deceased has a spouse and descendants, then the damages will be split between them and the surviving spouse. Likewise, if the deceased has descendants but no surviving spouse, the damages will be divided between the descendants.

If there is no surviving spouse or descendants, the deceased's parents and siblings may receive the damages. The descendants of the deceased's siblings (the deceased person's nieces or nephews) may also be eligible for compensation in some cases. And if none of those people survive, the damages may go to more distant relatives, such as grandparents, aunts, uncles, or cousins.

Our attorneys can help

Determining who is eligible to file a claim and receive damages in a wrongful death case can be complex — especially if the deceased did not have a will. When you turn to our firm following the wrongful death of a loved one, we can help you understand your rights and ensure that all eligible survivors receive the compensation they deserve.

Contact us today at (800) 985-1819 to schedule a free consultation with a [Chicago wrongful death lawyer](#) from our firm. We're here to answer your questions, explain the legal process, and help you navigate this difficult time.