

Without a will, aunt's inheritance 'wishes' don't hold up to the law

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Q: My aunt left me her house when she passed away, but she didn't have a will and we didn't have any papers signed to state that she wanted me to have it. She told my cousin that she wanted me to have it. My cousin was over my aunt's affairs. Where do I start to try to get the deed to the house put in my name?

A: The first thing you should know is that you have no legal right to the home. Laws relating to who gets property after the death of a loved one are based on probate rules and non-probate rules.

The state has an interest in making sure that property from a deceased person is distributed according to that person's wishes, but those wishes must be stated in writing in a will. Without a will, the property owned by that person will go to people as designated by statute for estates where no will exists.

You can understand why state laws are rather strict about the distribution of property after a person has died. The person who had the most to say about the distribution is no longer around, and those who survive her may disagree on what she said or intended.

For these reasons, the rules relating to wills are quite strict. Wills need to be written, be specific and have a number of witnesses (the number depends varies by state). Finally, a will must be notarized.

Your aunt didn't have a will. Thus, the most important question is whether all of her survivors agree that you should get the house. If they agree, you might have

several choices on how to take possession of the home. One may be to go to the probate court and motion the court to have the property go to you. You might need the help of an attorney, and you will probably need the living relatives to work with you to get all of this done.

The other option might be for you to talk to a title company or settlement agent and see what options they offer a person like you. It may be that the title company or settlement agent is willing to insure title in your name if all the living relatives sign a deed conveying any interest they may have in the property to you. The title company or settlement agent may charge you an additional fee, but their system may be the most efficient in transferring ownership of the property to you.

One last caution: We don't know how many other relatives are around who might challenge your receipt of the property. While your cousin may wish to cooperate with you and understands that your aunt's wishes were for you to get the property, other family members may feel that they are entitled to the property and may not be willing to give up their rights.

Good luck and we hope things work out for you.

Ilyce Glink is the creator of an 18-part webinar+ebook series called "The Intentional Investor: How to be wildly successful in real estate," as well as the author of many books on real estate. She also hosts the "Real Estate Minute," on her YouTube channel. Samuel J. Tamkin is a Chicago-based real estate attorney. Contact Ilyce and Sam through her website, ThinkGlink.com.



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