

So What If I Don't Know Where My Cousin's Son Lives?



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Your last will and testament declares who you wish to inherit assets from your estate. The beneficiaries of your will can be your relatives but can also be whomever your heart desires – no matter if it's your neighbor, your hairdresser, or your best friend. But, if you disinherit a relative or designate individuals other than your relatives, or designate only some of your relatives, it may be important for you to prepare a family tree.

Under the law, if you do not leave a will, certain relatives are entitled to a share of your estate. These people are your *distributees* or *intestate beneficiaries* – often your spouse and children, but, if you don't have a spouse or children, distributees can include any living parents, siblings, nieces and nephews, or even aunts, uncles and cousins. If you do have a will, then in order for your will to be given legal effect, the Surrogate's Court must obtain *jurisdiction* by serving upon all of your distributees a "citation," or summons, which gives them notice and an opportunity to object to your Will, or you can attempt to obtain their consent.

Let's be honest – we don't all know where our siblings ended up, who they married, or what their children are up to, let alone where cousins or their children are currently located. If your distributees are unable to be located, are remote relatives, or if they are disabled and require a guardian to represent their interests, it could cost time and money to locate and notify them. Sometimes, a genealogist is required to research and attest to your family tree, which is an additional expense to your estate.

A family tree can speed up the process of giving your will legal effect and help make sure your wishes are followed. Otherwise, there can be delays in the appointment of an executor and added expenses that cost money you wanted to leave to your beneficiaries. A family tree could be a chart, graph, or affidavit which outlines the following: your spouse and children, if any; your siblings; your siblings' children; your parents; your parents' siblings; and their siblings' children (your first cousins). You should include these individuals even if they have passed away, with the approximate date of their passing. By identifying your distributees now, everyone on your family tree can hopefully be located without added time or cost.

As an alternative, a revocable living trust, or "inter-vivos trust," is a mechanism whereby certain assets are transferred into the name of a trust during your lifetime. You are the trustee, so you control the trust assets while you are alive. Upon your passing, your appointed successor trustee distributes the trust assets according to your wishes.

The use of a revocable trust avoids the probate process, as all assets pass automatically to your intended beneficiaries by "operation of law." A revocable trust generally does not require any court intervention to give it effect. This alleviates the need to have distributees involved in the administration of your estate and does not give them an opportunity to object. As such, the revocable trust provides for the timely and cost-efficient disposition of your assets to your beneficiaries upon your death.

For questions or more information, contact practice team leader [David Siegfeld](#), 518.462.0110 x1425 or any attorneys in our [Trusts & Estates](#) practice at Lippes Mathias LLP to schedule a consultation.

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