



Majestic Oak Financial
A Registered Investment Advisor

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Happy Autumn! I hope this finds you healthy and enjoying the start of some cooler weather!

Adding Insult to Injury – Being the Surviving Spouse of a Decedent Without a Will

The death of a spouse is probably one of the most difficult life events we might navigate someday. In addition to the emotional trauma, the administrative burden of settling a spouse's estate can become a burden that is almost unbearable. If the survivor is "fortunate", all the necessary (and updated) estate planning documents have been in place to streamline the process. But a surviving spouse whose partner died without a will could face some extremely nasty surprises.

Dying without a will is called dying intestate. In this circumstance, state law determines how the deceased's assets and property are divided up among heirs. The federal government has relegated responsibility to the individual states and therefore, each state has created its own set of laws governing "who gets how much". The laws are rooted in antiquated values while attempting to distribute assets for every possible family situation.

In very traditional circumstances, the situation is straightforward – the surviving spouse becomes the sole heir of all the decedent's assets and property. But traditional circumstances are no longer the norm. Setting aside partnerships that do not include marriage (as that's a whole separate can of worms), situations such as second marriages, later in life first marriages, children from previous relationships, etc. all complicate the issue. So states have created various sweeping laws to deal with these arrangements when we, for some reason or another, decide not to create at least a will to deal with them ourselves. And the results can be far from what we think is right, fair, or reasonable.

How this can go sideways is best exemplified with a completely fictional but possible story. Jim and Jane live in Texas and have been married for about 5 years. Jim is divorced with one child, Max, from his previous marriage. This is Jane's first marriage and she has no children from any prior relationships. Jim and Jane have 2 children, Robin and Fred, and a home that Jim and Jane purchased together. Before his marriage to Jane, Jim established and funded an IRA. He has not contributed to it since before his marriage to Jane and there is no beneficiary designation on it. He also came into the marriage with Jane owning a rental house. It is in his name alone and the rent has always paid all the costs associated with the property. Since they've been married, Jim has worked for Company XYZ and contributed to their 401k. Again, there is no beneficiary designation on this account.

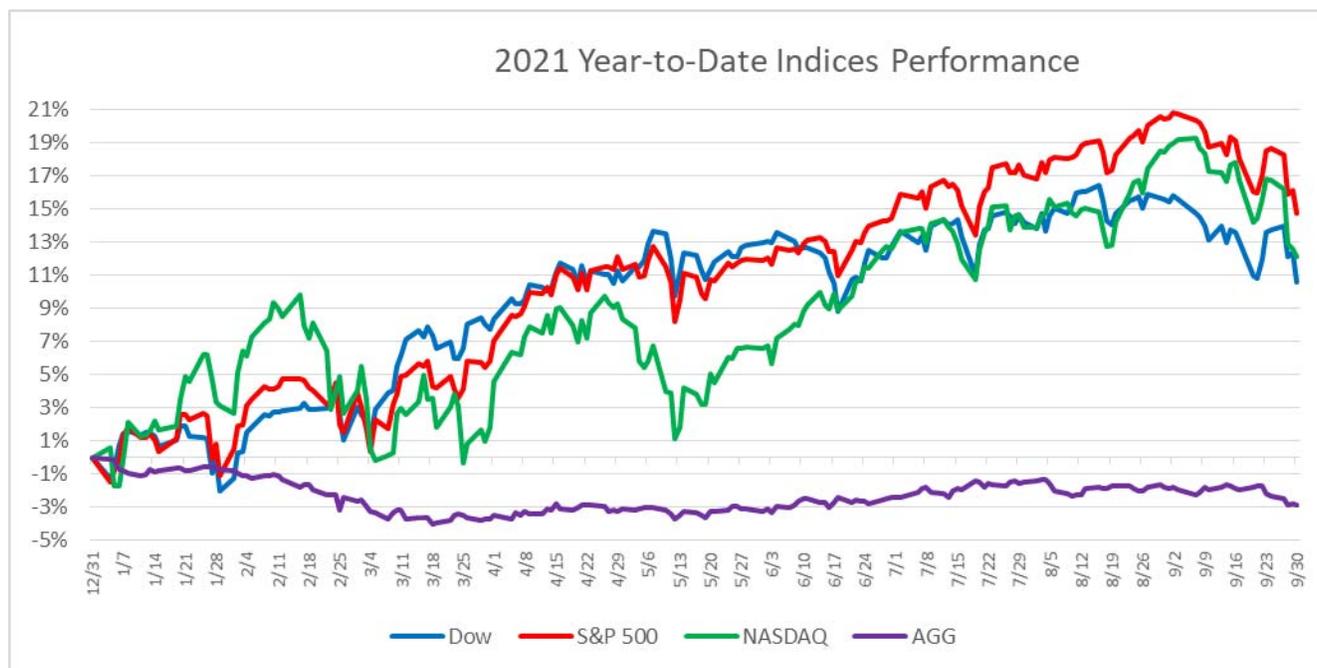
Unexpectedly, Jim dies... without any sort of will. Jane figures she needs to see an attorney but has no idea what to expect. However, she's unprepared for the reality of the intestacy laws of Texas. Since Jane's name is on the deed to their home, it becomes hers. Jim's 401k with his current employer also becomes Jane's property because he contributed to it throughout their marriage. The IRA that was funded before marriage and had no beneficiary designation... that becomes 1/3rd Jane's, the other 2/3rds is divided between Max, Robin and Fred. Keep in mind that the funds in those beneficiary IRAs for each child become completely the property of Max, Robin and Fred to do with as they wish as each child turns 18, regardless of that now-adult's decision-making ability. The fate of the rental house is much more interesting. Since it could be considered Jim's sole and separate property, Jane receives a life estate of 1/3rd of the income from the property – meaning for the remainder of her life,

she has a right to receive 1/3rd of the *income*. The other 2/3rds of the income go to the children equally. However, the 3 children are the owners of the property jointly as of the date of Jim’s death. Jane has absolutely no ownership interest in the property – although in reality, management of it will fall to her and Max’s mom. Let’s hope they get along! And in reality, the children could decide to sell the property at any time and reinvest the proceeds in something that does not create any income. The rules determining what these forced investment partners can do with the principal prior to Jane’s death is fuzzy.

Clearly, this is a mess. Just about every state has quirky laws that are equally messy. But for one piece of paper, this convoluted situation could have been made straightforward. Unfortunately, this made up situation is not uncommon. Per a Gallup survey from 2020, only 46% of Americans have a will in place. If you are one of the 54% that do not have a will or have not looked at yours since life circumstances have changed, maybe it’s about time... Yes, it can be an uncomfortable topic and it requires some decisions to be made, but it’s not written in stone and something is better than nothing.

3rd Quarter 2021 Market Performance*

<i>Index</i>	<i>09/30/2021 Ending Value</i>	<i>3Q 2021 Performance</i>	<i>Year to Date Performance</i>
Dow Jones	33,843.92	<1.91%>	10.58%
S&P 500	4,307.54	0.23%	14.68%
NASDAQ	14,448.58	<0.38%>	12.11%
Lehman Aggregate Bond	114.83	<0.43%>	<2.84%>



Your Individual Investment Reports

The following reports for 3rd Quarter 2021 are provided for your review:

- **3rd Quarter 2021 Portfolio Performance** – Compares the Year-to-Date 2021 percentage performances of the S&P 500 & Lehman Aggregate Bond Index with your portfolio performance.
- **3rd Quarter 2021 Portfolio Performance vs. Inflation** – Performance of your investment portfolio compared to the rate of inflation as measured by the Consumer Price Index (CPI) for both the since inception period of your accounts and year-to-date 2021.
- **Account Summary** – Current market value of each asset within your accounts as of 09/30/2021
- **Investment Billing Statement** for the 4th Quarter 2021^{**}: Investment advisory fees for the period of 10/01/2021 through 12/31/2021 (based on 09/30/2021 values). *This is an informational billing only.* Your account is automatically debited unless other arrangements have been made.

Please remember that this investment reporting is for informational purposes only. You should also refer to the monthly account statements you receive from TD Ameritrade Institutional.

If you happen to know anyone who might benefit from the services I provide in assisting you in managing your investment portfolio and reaching your financial goals, I would enjoy speaking with them. Don't keep me a secret! ☺ And as always, please do not hesitate to contact me if you have any questions about your reports or wish to discuss any other financial matters.

Sincerely,



Anna M. Popke, CFP[®], RICP[®]

*Index performance is provided as a benchmark only. The performance of your individual investment portfolio will vary from that of any one index. Past performance of an index is never a guarantee of future results.

****PLEASE NOTE:** Clients who hold “cash reserves” within their brokerage accounts will have slightly different portfolio balances depicted on the Statement of Assets Summary and the Billing Statement. This is because “cash reserves” are excluded from the advisory fee. However, cash held awaiting investment in the upcoming quarter *will* be subject to the normal quarterly fee.

Investment Advisory Fee Calculations:

Fees are paid in advance on the 7th (or prior closest business day) of the month following the end of the quarter. The amount due is calculated by applying the prorated annual fee percentage to the previous quarter-end account value(s). Fees are further prorated for accounts opened after the beginning of a new quarter. Fees may be paid directly from the investment account(s) or consolidated and paid from a specified account. Money market/cash reserves are excluded from totals. Statements have been prepared by Majestic Oak Financial from information provided by TDAmeritrade and while deemed reliable, are not guaranteed.