

## Priority of Appointment

Priority of Appointment is a way of determining the ranking of person(s) who may be appointed as PR in both an informal and formal proceeding.

Referred to as the:

**“Priority Ladder”**

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## Priority of Appointment

- (1) the person with priority as determined by a probated will including a person nominated by a power conferred **in a probated will**;
- (2) the surviving spouse of the decedent who is also a devisee **in the will**;
- (3) other devisees **in the will**;
- (4) the surviving spouse of the decedent;
- (5) other heirs of the decedent;
- (6) if there is no known spouse or next of kin, a public administrator appointed.



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## Priority of Appointment

Regardless of his or her priority, no person is qualified to serve as a PR if:

1. He or she is under the age of 18;
2. The Court finds, in a formal proceeding, the appointment would be contrary to the best interests of the estate.

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## Priority of Appointment

- A person with priority may renounce (decline) the right to serve.
- For (2) – (5) on the ladder, a person with priority may nominate another to serve as PR.
- For (2) – (5) on the ladder, a person with priority may renounce (decline) the right to nominate another to serve as PR.

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## Priority of Appointment NO WILL - 1 PERSON WITH PRIORITY

If there is only one person with the highest priority under the statute and s/he renounces (declines) the right to serve, s/he can:

Nominate *anyone else* to serve and his/her priority passes to the nominee

OR

Renounce (decline) the right to nominate and priority passes to the next highest priority person as determined by the statute

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Mike Brady died without a will leaving his wife, 3 sons and 3 step-daughters.



Mike's wife, Carol, is on the highest rung of the priority ladder.

What are Carol's options if she does not want to serve?

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Carol can renounce her right to serve and:

Nominate another (Alice) to serve. Alice now takes Carol's place on the priority rung and assumes Carol's priority in applying to become a PR.

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Carol can renounce her right to serve and:

Renounce the right to nominate another & priority passes to the person(s) on the next rung - Mike's 3 sons.

The next named person must qualify. While Mike's adult sons qualify, minor sons would not.

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**Priority of Appointment  
NO WILL  
1+ PERSONS WITH PRIORITY**

If there is more than one person with equal highest priority under the statute and one or more

renounces (declines) the right to serve  
and  
renounces (declines) the right to nominate another,

then priority is in the remaining persons who shared equal highest priority with the person renouncing.

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## Priority of Appointment

### NO WILL

#### 1+ PERSONS WITH PRIORITY

If there is more than one person with equal highest priority under the statute and one or more renounces (declines) the right to serve, the renouncing person(s) can nominate another to serve in their place but all remaining persons with highest priority must agree that the nominated person will serve with them.

If they do not agree, a formal petition must be filed.

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Mo, Larry & Curly are all brothers and next heirs of their deceased father who died without a will.

They all share priority. They are on the **same** rung of the priority ladder, which is the highest rung.

What are Curly's options if he does not want to serve?

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Curly may or may not renounce the right to serve. If Curly renounces the right to serve and renounces the right to nominate, Mo and Larry can serve together.



Curly may renounce the right to serve & nominate another (Shemp) to serve but Shemp may only serve if Mo & Larry agree. If there is no agreement, a formal petition must be filed.

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**Priority of Appointment  
EXCEPTIONS WITH A WILL**

**If the person with highest priority does not want to serve, s/he may renounce (decline) the right to serve; AND**  
**If the will contains language which gives that person the right to nominate someone else, that person can**

- nominate someone else to serve (who need not have statutory priority but who assumes the priority of that person) OR
- renounce the right to nominate someone else.

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**Priority of Appointment  
EXCEPTIONS WITH A WILL**

**If the person with highest priority does not want to serve, s/he may renounce the right to serve; BUT**

**If the will contains NO LANGUAGE which gives that person the right to nominate someone else, that person may not nominate someone else and priority passes to the next named person in the will or if none, the next highest priority person as determined by the statute.**

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**Priority of Appointment  
EXCEPTIONS**

**If the person with highest priority does not want to serve, and s/he fails to renounce**

- Any interested person may file a Formal Petition seeking the appointment of any person but the Formal Petition must explain why other persons with higher priority are not appropriate or available
- The Court will appoint the person with the highest priority **but** if those having highest priority were given notice and have failed to request appointment or nominate another and administration is necessary, the Court may appoint in a formal proceeding any suitable person regardless of his or her priority.

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## Priority of Appointment REVIEW

**A PR with priority may:**

1. Seek to be appointed PR
2. Renounce the right to be appointed and Nominate another
  - Person nominated takes the place on the priority ladder
  - If more than one person is on the same rung priority ladder, all on the same rung must concur
  - If the PR's priority comes from a nomination in the will (#1 on the ladder), the will **MUST** include language permitting the PR to nominate another otherwise the PR may not nominate another.
3. Renounce the right to be appointed and renounce the right to nominate another
  - If the PR was the only one on the priority ladder rung, priority drops down to the next rung on the priority ladder
  - If there are multiple people on the same rung of the priority ladder, those remaining on same rung the ladder have priority
4. Do nothing

Any other person on the priority ladder may petition for appointment in a FORMAL proceeding and notice must be given to all persons with higher priority.

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