

Wills and Why You Need One

Many people think that a Will is only for people who want to set up trusts or save on estate taxes. Those may indeed be important benefits for some people. The primary reason for making a Will, however, is to leave your property to those you care about in the manner and proportions you choose.

If You Die Without a Will

If you die without a Will, the assets in your name in most instances will be distributed by a court-appointed administrator among your family members pursuant to a statutorily fixed priority. These rules, known as the “Distribution Rules of Intestacy”, reflect what the New York State Legislature decided would likely be preferable in most situations. For example, if you are survived by:

- a spouse and descendants: your spouse takes the first \$50,000 and one-half the balance of the property, and your descendants share the rest.
- a spouse but no descendants: spouse takes all.
- descendants, no spouse: descendants take all.
- a parent or parents, no spouse, no descendants: your parent or parents take all.
- descendants of either parent but none of the closer relatives: the descendants of your parents take all.
- one or more grandparents or their descendants, but none of the closer relatives: half goes to the maternal side and half to the paternal (but not including second cousins if you have any first cousins on either side).
- where “descendants” include a mix of generations, living children take a full equal share, and children of predeceased children then divide equally the combined shares of their deceased parents.

This allocation may very well differ from the distribution you desire. A properly drafted Will can enable you to direct the distribution of your assets in accordance with your wishes.

A Will determines who will oversee the administration and distribution of your estate assets.

You name as the legal representative(s) (“Executor(s)”) of your estate who you want to administer and distribute your property. An Executor can be a relative, a friend, your lawyer or a bank or trust company that specializes in the handling of estates.

The choice of an Executor is yours only if you make a Will. You realize the value of having qualified people help with your affairs during life. Such people are just as valuable after you die.

What is the best way to make a Will?

How do you go about making a Will? Can you pick up some printed forms and fill them out in your own handwriting? Perhaps you’re interested in buying a book that tells you how to write your own Will. Can you download a form Will from the internet? These options are all available, but you very well might create a Will that is not the best Will for your personal plan. You might miss an essential element of a comprehensive estate plan or any number of opportunities to maximize the efficient distribution of your assets to your chosen beneficiaries. Moreover, you may not end up with a valid Will, as Wills have formalities of execution that are fixed by state law. An invalid Will can result in your assets being administered under the Distribution Rules of Intestacy. Securing the professional guidance of an attorney can resolve these issues.

Making the best plan and the best Will takes knowledge and expert advice.

Making the best plan and the best Will takes knowledge and expert advice. For example, do you know that property held jointly with another may not be distributed by Will? Or that life insurance may or may not be distributed by Will depending on who is named as a beneficiary? Or that the same can be said of individual retirement accounts, pension plans and other assets? Or that a spouse has a right to a car and certain other items, as well as to a large share of your property no matter what your will may direct? The best estate plan recognizes that your Will is only part of your total plan for the distribution of your property. To create the best Will and estate plan for you, make an appointment with your attorney to discuss drawing your Will as well as your overall estate planning wishes.

If you plan properly and have your plan reviewed periodically, you may lower or eliminate the tax burden on your estate and leave more to your beneficiaries.

ELDER LAW REPORT

MARTIN PETROFF & ASSOCIATES
270 Madison Avenue, New York, NY 10016
P (212) 679-5800 • F (212) 679-5801
www.petroffelderlaw.com

ELDER LAW • TRUSTS & ESTATES • ESTATE LITIGATION • GUARDIANSHIPS • MEDICAID • HEALTH CARE PROXIES

Before you make a Will, you should also know how estate and income taxes affect you and your assets. The federal and New York tax laws change often as a result of various tax reform acts. So you may not be up-to-date with these complex and frequently changing laws. Also, you may be unaware that you can choose which of your beneficiaries pay the estate taxes. If you do not choose how your estate taxes will be allocated, the tax

burden will be allocated among your beneficiaries according to statutory rules that may not be in accordance with your wishes. An attorney can help you draft a Will and create an estate plan that addresses these issues. If you plan properly and have your plan reviewed periodically by an attorney, you may be able to reduce or eliminate the tax burden on your estate and leave more to your beneficiaries. ■