

Do I Need a Will?

Control of your assets is more than a matter of money. No one should control your assets for you. Living in your own house, providing for your disability or just old age, and upholding the lifestyle of your children or spouse are very powerful incentives to control your assets and their eventual disposition. Proper estate planning is a sure way of maintaining your dignity and the dignity of your loved ones.

This guidebook seeks to answer the question: "Do I Need a Will?" It describes what a will covers and what happens if you were to die without one. It also goes on to describe several other tools, including powers of attorney, health care proxies and living wills.

*As you read through its contents,
please contact us with any questions
you may have.*



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Do I Need a Will?

Many people try to handle their affairs by using software or do-it-yourself kits. That's fine for many situations, but there's no such thing as a simple will. Even the simplest will, a will of a few pages, is much more complex than it looks to the eye of an ordinary person. The elements of the simplest will are: the decedent, or testator; the executor; the will's provisions; and the proper execution of the will. Already the simple will does not look that simple.

Some matters escape the will entirely, like the proceeds from an insurance policy. A surviving spouse is usually allowed half of their spouse's estate, no matter who or what the spouse leaves their assets to. There may be prior wills or later wills, and these might actually be favored over the will you executed or wrote.

If a will is invalidated or you die without a will, your assets will be disposed of based on New York's intestate statutes. Intestacy means that your wishes and control of your assets pass from you onto a Court, called a Surrogate's Court. While judges are fair, the state provides very strong presumptions which a court must enforce and which presumptions may have nothing, or little, to do with your wishes. The stronger a will is, and whether or not it is correctly and clearly drafted, the less chance of the will being nullified in some way and the more likely it is that your wishes are to be honored.

Getting Started

Before you draft your own will or seek an attorney's assistance, you will need to gather all the information you can about assets you now own, that you now have control over, that you share ownership and control over with others, and that you might soon own or control ownership in the future. Often, you are not sure about an asset or its control, so make a note of these assets anyway. Assets often are real property, personal property (such as furniture, cars, bank accounts, certificates of deposit, business equipment, corporate assets, and other tangible things), stocks, bonds, and cash. Control means that you have an everyday say in how those assets are used. Assets soon to be owned or controlled usually include inheritances, marriage gifts, and business revenue. Assets also include pensions, rights to buy out business interests, and options to buy or sell anything. Gather up all information in fixed or written form because how an asset is held often determines ownership and control.



Do I Need An Attorney?

While you don't necessarily need an attorney to draft your will, it is highly recommended, especially for more complicated estates or when there are minor children involved. When choosing an attorney, you should contact one who is experienced in the areas of elder law, trusts and estates, and of Surrogate's Court. Bring all the documentation you assembled to the attorney and expect to answer questions as to what you really do want to happen when you die or become incapacitated.

A will and the other estate planning tools discussed in this guidebook help provide you with peace of mind. They are relatively inexpensive if they are professionally drafted. They are absolutely priceless if needed because they avoid long, drawn-out legal battles. But there's also the avoidance of probable family problems when you can no longer "speak" for your own needs, and must rely on others who may or may not have your best interests in mind. Also, with greater numbers of people with Alzheimer's or autism, this advance planning is now almost mandatory. Finally, there are both tax and marital concerns which must be addressed before trouble starts. These are best addressed by experienced attorneys.

Other Estate Planning Tools

Durable Power of Attorney

A durable power of attorney is a signed document which transfers decision making from you to another person, in the event that you are too sick, disabled or aged to make certain decisions on your own. They are very powerful instruments, and should be given only to those individuals you trust most.

Health Care Proxies

Health care proxies are growing in importance because emergencies do occur, and it is usually too late to tell a hospital or doctor, or a court, what life extensions you desire (if you desire any extensions at all if you are incapable). It allows you to appoint a legal agent to make health care decisions for you in the event of your incapacity.

Living Wills

A living will is a legal document that a person uses to make known his or her wishes regarding life-prolonging medical treatments. It informs your health care providers and your family about your desires for medical treatment in the event you are not able to speak for yourself.

Living Trusts

Living trusts and trusts in general are formal turnovers of your assets, and their control, to another person or institution for your benefit, or the benefit of a disabled person or child, while you are still alive.



PLEASE CALL 1-866-825-1529 TO SCHEDULE AN INITIAL CONSULTATION.