

## Why you need a will

Many people think that a will is only for those who want to set up trusts or save taxes. That may be one benefit. But the primary reason for making a will is to leave your property to those you care about, and in the proportions you choose.

## If you die without a will

If you die without a will, the property in your name in most instances will be distributed among your family members, and perhaps not exactly the way you prefer. Thus, if you are survived by:

- spouse and descendants, your spouse takes the first \$50,000 and one-half the balance of the property, and the descendants share the rest.
- spouse but no descendants: spouse takes all.
- descendants, no spouse: descendants take all.
- a parent or parents, no spouse, no descendants: the parent or parents take all.
- parents' descendants but none of the closer relatives: the parents' descendants 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 cousin on either side).
- where "descendants" includes a mix of generations, living children take a full

equal share, and children of predeceased children then divide equally the combined shares of all their deceased parents.

## If you die without a will and leave young children

Here's something else to consider: If your children are under 18 years old at your death, a court-appointed guardian will be required to manage your child's share. Although the court probably would appoint your spouse as guardian, a bond may have to be posted. Payment of the bond premiums will cost money. If any money has to be used to pay for your child's education, clothing or living costs, prior approval of the court is necessary. The court also requires annual accountings of income and expenses. In addition, investment of the funds by the guardian may be limited as well. If the guardianship lasts for any length of time, the child's funds may not grow at an acceptable pace. All these problems could be easily avoided with a properly drafted will.

If you and your spouse should die at or about the same time it is important that you make provision not only for a guardian of the property of any child under age 18 but also, and perhaps more important, you should name a guardian of the child's person. A guardian of the person is given custody of the child during minority.

## A will is your personal plan

A will is tailored to your own particular needs. You name as executors those persons you want to handle 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 your life. It is just as valuable after you die.

## How to make the best will for your personal plan

How do you go about making a will? Can you pick up some printed forms and make them out in your own handwriting? You could do that, but you might not have a legal will, and you may not have the best will for your personal situation.

## Making the best plan and the best will takes knowledge and expert advice.

Perhaps you're interested in buying a book that tells you how to write your own will. This might cause you to miss an essential requirement or have less than the best plan.

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 who is named as 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 some other items, and to a large share of the property no matter what your will may say? The best plan recognizes that the best will is only part of the total plan for the distribution of your property.

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

Before you make a will, you should also know how estate taxes affect you. The federal and New York estate taxes frequently change as the result of various tax reform acts. So you may not be up-to-date with these complex and always changing laws. Also, you may be unaware that you can choose which of your beneficiaries pays the estate taxes. If you plan properly and have your plan reviewed periodically by an attorney, you may be able to plan your estate in ways that can lower or eliminate your tax burden and leave more to your beneficiaries.

**Discuss the question of a fee with your lawyer in advance.**

To have the best plan for yourself and for your beneficiaries, call a lawyer and make an appointment to discuss your will. Remember, the advice of an expert may prove invaluable.

The cost of drawing a will depends on the amount of time your lawyer spends on the matter and the complexity of your assets. In small estates, when a will contains no complicated provisions or unusual problems, the fees may be very modest. You may discuss the question of a fee with your lawyer **in advance**. Remember, making a will is one of the wisest investments of your life and after.

*This pamphlet, which is based on New York law, is intended to inform, not to advise. No one should attempt to interpret or apply any law without the aid of an attorney. This is particularly true of trusts and estates law. You should consult an attorney before making decisions in this area. Produced by the New York State Bar Association Committee on Public Relations in cooperation with the Elder Law and Trusts & Estates Law Sections.*



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