

Wills



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Compare your current Estate Plan to what it ought to be. The problem is that you do not know what you do not know. Feldman, Kramer & Monaco, P.C. can help!

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What is a Will?

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A Will, or formally called a Last Will and Testament, is a legal document that outlines how a person wants their property, money and belongings to be distributed after their death. In NY, having a valid will ensures that your wishes are honored and helps avoid confusion or legal disputes amongst your heirs.



Why Do You Need a Will?

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- Control over your assets
 - You decide who inherits your property, money and possessions instead of the state.
 - Without a will, New York's intestacy laws determine who inherits which may not align with your wishes.
- Name a Guardian for Minor Children
 - A will lets you name a guardian to care for your children if they are under 18. Without this, the court decides.
- Appoint an Executor
 - You choose a trusted person to carry out your wishes and handle the estate process.
- Reduce Conflict
 - A clear will can reduce family disagreements and court involvement.
- Support for loves ones or charities
 - You can leave gifts or set up trusts for specific people or causes.

Without a Will...

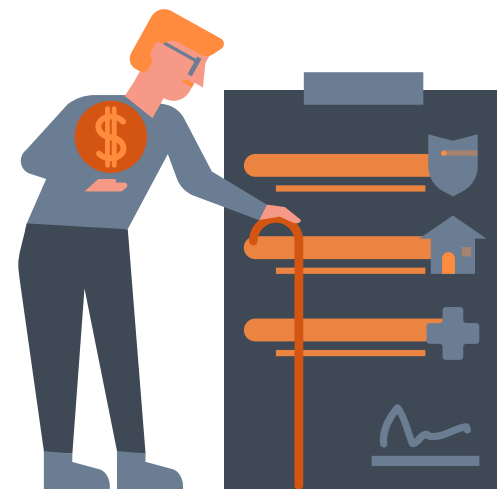
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What happens if you die without a will in New York?

- If you die intestate (without a will) your estate is distributed according to New York Estates, Powers and Trusts Law (EPTL). *For example:*
 - If you are married with no kids, your spouse gets everything;
 - If you have a spouse and children, the spouse gets the first \$50,000 plus half of the remainder; the rest goes to your children;
 - If you are unmarried with no kids, your parents inherit everything;
 - The law follows a strict order of relatives- no friends, unmarried partners, or charities.



Requirements for a Valid Will

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The requirements for a valid will in New York State include:

1. You must be at least 18 years old and of sound mind.
2. The will must be in writing.
3. The will must be signed by you.
4. The will must be signed in the presence of two (2) witnesses.
5. The two (2) witnesses must also sign the will.
6. There should also be a self-proving affidavit which is a notarized statement by you and the witnesses which can speed up the probate process.





In New York an elective share is a legal right that protects a surviving spouse from being disinherited. You cannot disinherit a spouse in NY. The surviving spouse is allowed to claim a portion of the deceased spouse's estate, even if the will tried to leave them nothing or very little.

- Under EPTL section 5-1.1-A, a surviving spouse is entitled to the greater of:
 - \$50,000; **OR**
 - One third (1/3) of the net estate (including certain non probate assets).



What is Probate?

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- Probate is the legal process through which a deceased person's will is validated and their estate is managed and distributed under court supervision.
- In NY, probate takes place in Surrogates Court in the county where the deceased lived at the time of death.
- Probate usually takes about 6-12 months for simple estates or 1-3+ years for contested or complex estates.



The Probate Process

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- The executor who is named in the will files the will and a probate petition in surrogates court.
 - *If there is no will, someone, usually a close relative, files for administration instead.
- The court confirms that the will is legally valid (Validating that the will is properly executed and witnessed).
 - Interested parties (heirs and beneficiaries) can challenge the will.
- The court appoints an executor.
 - *If the will is accepted, the court issues Letters testamentary, giving the executor legal authority to manage the estate.
- Inventorying the estate: The executor identifies and values all assets owned by the deceased.
- Paying debts and taxes: The executor pays funeral expenses, outstanding debts and any taxes due.
- Distributing assets: Once debts and taxes are settled, the remaining property is distributed to beneficiaries named in the will.



What Assets go Through Probate?

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Probate assets are those held only in the deceased person's name and don't pass automatically to someone else. These include:

- Solely owned real estate
- Bank accounts with no joint owner or TOD (transfer on death) designation
- Personal property (jewelry, cars, furniture)
- Stocks or bonds titled in the decedents name

What avoids probate? Assets that pass outside of probate include:

- Jointly owned property with the rights of survivorship
- Bank accounts with named beneficiaries (pod/tod)
- Life insurance and retirement accts with designated beneficiaries
- Trust assets





Along with a will, it is also important to sign a Power of Attorney! In New York, a Power of Attorney is a key part of any estate or life planning toolkit.

What is a POA?

A **Power of Attorney (POA)** is an important document that gives someone you trust the legal authority to act on your behalf—especially if you’re unable to act for yourself due to illness, injury, or absence. A POA helps to manage and finance your legal affairs. You decide how much authority they have and when it begins.

Your appointed agent can:

- Pay your bills
- Access your bank accounts
- Manage investments
- Handle taxes
- Sign documents
- Buy or sell property

Why is a POA Important?

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- It protects you during incapacity:
 - If you become mentally or physically unable to handle your affairs (eg., after a stroke or accident), a POA allows your chosen person- called your agent- to manage things for you without needing court approval.
 - Without a POA, your family may have to go through a costly and time consuming guardianship proceeding.
- It helps manage your financial and legal affairs.
- Your POA can be customized. In New York State, a POA can be tailored to:
 - Limit powers to a specific task (like selling a house).
 - Include a statutory gift rider if you want to allow the agent to make certain gifts or transfers (required under the New York law for larger gifts).
- It avoids court involvement:
 - A valid POA keeps your personal business out of court and gives you more control over who acts for you and how.



There are multiple types of POAs.

The one FKM uses, and the best one available is called a
durable power of attorney.

This is because a durable power of attorney remains in effect even if you become incapacitated, which is necessary for estate planning purposes.



Without a POA...

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- Without a POA, no one can legally manage your finances or make legal decisions for you without first going to court.
- Delays due to court can lead to missed bills, frozen accounts, and unnecessary stress for you and your loved ones.
- Overall, it is clear that a POA is critically important for elder law planning in New York. It is one of the most powerful tools used to protect older adults' finances, independence, and long term care options as they age.





- You can help protect assets for Medicaid planning:
 - New York Medicaid has strict income and asset limits for long term care (like nursing homes).
- A POA with a statutory gifts rider allows the agent to transfer assets, create or fund an irrevocable trust, complete Medicaid spend down planning, and protect the family home or savings.
- Without this authority, a Medicaid plan may fail- and the elder could lose everything to their nursing home costs.





Common mistakes to avoid include:

- Not executing a POA early enough (before mental capacity is lost);
- Using an outdated form (New York's POA laws changed in 2021);
- Not including the gifts rider (limits Medicaid strategies); **OR**
- Choosing an unreliable agent

