

ESTATE PLANNING - FREQUENTLY ASKED QUESTIONS

Why should I write a will?

1. To make sure that your property is left to the people choose.
2. To name a Guardian(s) to care for your minor children
3. To place monies left to minor children in a Trust and name someone to manage that trust.

What happens if I die without a will?

If you die without a will, your property will distributed to your family members (and not necessarily in the amount or manner that you prefer).

Under NYS Law, if you die without a Will and:

- A. You're survived by a spouse and children, your spouse gets the first \$50,000 of your estate; 50% of the balance of your estate goes to your spouse; and 50% is divided among your children;
- B. You're survived by a spouse and no children, your spouse gets it all;
- C. You're not survived by a spouse or children, your estate goes to your parent(s);
- D. You're not survived by a spouse, children or parents, your estate goes to your siblings*.

*(if your sibling pre-deceased you, then his/her share will pass to the next generation)

What does an Executor/Executrix do?

Your Executor(rix) is responsible for having your will probated. This person will retain an attorney and provide all necessary information to the attorney to have your will probated. The Executor(rix) will get a commission for his/her services. The commission is a percentage of your estate and is set forth in the NYS Statutes governing estate distribution.

I don't want to leave anything to my spouse, can I do that?

No. Under NYS Law you cannot disinherit your spouse. The law makes specific provisions for the spouse of a deceased person. Under NYS Law, spouse have what is called "a right of election". Unless your spouse specifically waives his/her right of election, he/she can exercise this right at the time of probate if you have not made substantial provisions for your spouse in your will.

Does the Guardian of my children and the Trustee have to be the same person?

No. You can name one person as Guardian and another as Trustee.

Are specific requirements as to how the will is to be written and signed?

Yes. If you don't meet these requirements the Court can refuse to probate your will.