

Frequently Asked Questions

Q: **When is an estate necessary?**

A: When a person dies with real or personal property titled in their own name.

Q: **Do you need an attorney?**

A: It may be in your best interest to consult with an attorney as estate proceedings can range from relatively simple to extremely complex. Please remember that while court staff may provide legal information, they are prohibited by law from giving legal advice.

Q: **Where do you file an estate?**

A: In the County where the decedent was *domiciled*.

Q: **Who has the authority to file an estate?**

A: If there is a Will, the person named as Executor or Executrix or if they are deceased or unable to act, the person named as Successor Executor/Executrix. If there is no Will, a person who qualifies under the laws of intestacy.

Q: **What is an estate representative/fiduciary?**

A: A Voluntary Administrator, Executor, Administrator or Trustee.

Q: **What are Some Common Proceedings in Surrogate's Court?**

A: Probate: The process by which a Will is proved to the satisfaction of the Surrogate (Judge) to be the valid Last Will and Testament of the person who died (decedent).

Administration: A procedure for collecting and distributing assets of a person who died without a Will (intestate).

Voluntary Administration (also referred to as "small estate"): A simple and inexpensive method of administering the estate of a deceased person whose personal assets in the decedent's name alone do not exceed \$30,000 (exclusive of certain exempt types of property) for persons who died on or after January 1, 2009; or \$20,000 for persons who died before then. Voluntary administration may not be used to administer real property or in a wrongful death action.

Trusts: Surrogate's Court handles the following types of trusts:

- Inter vivos trusts: created during the settlor's lifetime
- Testamentary Trusts: Arises upon the death of the testator, usually under his/her Will.

Guardianship:

- Guardianship over an infant's (child under 18 years of age) "person", and/or "property" (Article 17). A guardian is usually a family member who is granted authority to care for and make certain decisions for a child (for the "person").

Whenever a child receives money (usually \$10,000 or more), someone must be formally appointed by the Court to safeguard these funds until the child becomes 18. Usually, a parent (the child's "natural guardian") is the person appointed "legal guardian" over these funds.

- Guardianship over an intellectually disabled person or a developmentally disabled person and/or property (Article 17-A): An individual who is certified by at least two doctors (one of which must be a medical doctor; and one of which may be a licensed psychologist) as being unable to care for him/herself because of mental retardation or a developmental disability can have a guardian appointed by the Court to make decisions on his/her behalf.

Q: What is a Will?

A: A Will is a written declaration of what a person wants done with their property upon death. A person who dies leaving a Will is said to die "testate". The law requires certain formalities for a Will to be valid. A valid Will can transfer an interest in both personal property (e.g. bank accounts, furniture, stocks, clothing) and real estate. A Will allows a person to name a trusted individual to serve as executor of the estate and guardian over the children. It also can provide protection for family members; for example, trusts for adult incompetent children, or "sprinkling" trusts for minor grandchildren where a trustee has discretion to distribute income according to need.

Q: Where should I keep my Will?

A: If a lawyer prepared your Will for you, you may wish to discuss with your lawyer where to keep the original Will. Generally, the original Will should be kept in a safe place which will be easily accessible if it is needed. For a small fee, the Court has a fire-rated vault in which Wills are stored for safekeeping. Each Will is kept confidential until the Court receives proof of death. Upon receipt of the proof of death, the Court will open the Will and it becomes a public document.

Q: The attorney who was holding a Will for safekeeping has retired or died. How can I locate the Will?

A: Contact the Surrogate's Court as they often have information of where to start looking. You can also contact the local bar association to see if they have information. Indicate the name of the decedent as well as your name and contact information.

Q: What happens if my loved one dies without a Will?

A: A person who dies without a Will is said to have died "intestate". Because the deceased person left no direction on how to dispose of their assets, New York law provides for how those assets will be distributed among the surviving members of the decedent's family.

Q: I am the Executor of a Will. How do I get the Will admitted to probate?

A: The original Will and death certificate needs to be filed with the probate petition and other supporting documents in the Surrogate's Court located in the county in which the

decedent was domiciled (primary residence). There is a filing fee based on the size of the estate.

Q: My mother left a very small estate. Is there an easy way for me to proceed?

A: If the value of the estate is under \$30,000 (exclusive of exempt property), for a person dying on or after January 1, 2009, and the decedent owned no real estate, a small estate proceeding may be filed. (The amount is \$20,000 for persons dying before January 1, 2009.) The filing fee is only \$1.00. This proceeding is available for persons who died with or without a Will. You can use the free and easy [DIY Forms Small Estate Affidavit program](#).

Q: How do I obtain guardianship (control) over a child and a child's property?

A: The forms can be found in the statewide promulgated forms or by picking up a package from the Surrogate's Court. You will need to file the child's birth certificate and other required information and pay a \$20.00 filing fee. Most commonly these proceedings are processed on the papers submitted to the Court, without the necessity of a formal hearing. However, in some circumstances, the court may require a hearing.