

Frequently Asked Questions

The Surrogate's Court is established in every county to hear cases involving the affairs of decedents, including the probate of Wills, and the administration of estates and trust proceedings. Family, Supreme, and Surrogate's Courts have concurrent jurisdiction over guardianships of the person and property of infants.

- [Can I handle an estate proceeding without an attorney?](#)
- [What is a decedent?](#)
- [When is an estate proceeding necessary?](#)
- [Where do you file an estate?](#)
- [Who has the authority to file an estate?](#)
- [What are some common proceedings in Surrogate's Court?](#)
- [What is a Will?](#)
- [Where should I keep my Will?](#)
- [What happens if my loved one dies without a Will?](#)
- [Who may be appointed to handle an estate proceeding?](#)
- [I am the Executor of a Will. How do I get the Will admitted to probate?](#)
- [My mother left a very small estate. Is there an easy way for me to proceed?](#)
- [My father died and the only asset is his house. Do I have to file a proceeding in Surrogate's Court to have it turned over to my siblings and to me?](#)
- [My mother died in a nursing home. I was told that I must file a proceeding in Surrogate's Court to obtain the money in her personal account. What proceeding do I file?](#)
- [My spouse died in a car accident. I have hired a lawyer to sue the driver of the other car. There are no assets other than the lawsuit. Does a proceeding need to be filed in Surrogate's Court?](#)
- [I am a surviving spouse who does not receive anything under the terms of my deceased husband's/wife's Will. What can I do?](#)
- [How do I get a copy of a death certificate?](#)
- [How do I obtain guardianship \(control\) over a child and a child's property?](#)
- [What does "presumptive Mediation" mean?](#)

Can I handle an estate proceeding without an attorney?

You are not required to have an attorney, but be aware that estate proceedings can range from the relatively simple to the extremely complex. Because, in many cases, it may be impossible at the beginning of the process to foresee what questions or issues may arise, it may be advisable to seek the assistance of counsel. If you are going to proceed without a lawyer, start by calling the appropriate Surrogate's Court for information regarding the necessary forms. Please remember that

while court staff may provide legal information, they are prohibited by law from giving legal advice. Forms and instructions are also available at www.nycourts.gov/forms/surrogates.



What is a decedent?

A decedent is the person who has died.

When is an estate proceeding necessary?

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

Where do you file an Estate?

In the County where the decedent was domiciled.

Who has the authority to file an estate?

If there is a Will, the person named as the Executor, or, if they are unable to act, the person named as the Successor Executor. If there is no Will, any person interested in the estate under the laws of intestacy (i.e., and in order of preference: the surviving spouse, the children, the grandchildren, the father or mother, the brother or sister or other persons who are distributees and who are eligible and qualify), or a public administrator or a creditor.

What are Some Common Proceedings in Surrogate's Court?

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 administration): 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 \$50,000 (exclusive of certain types of property, the clerk of court can provide more information as to whether you qualify).

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: The Surrogate's Court handles the following types of guardianships:

- *Guardianship over an infant's (child under 18 years of age) "person," and/or "property":* 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 in excess of \$10,000, 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 a person with intellectual disabilities or developmental disabilities and/or his/her property:* 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 an intellectual or a developmental disability can have a guardian appointed by the Court to make decisions on his/her behalf.



What is a Will?

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 an executor of the estate. 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. A petition to probate a Will must be filed in the Surrogate’s Court.



Where should I keep my Will?

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 store the Will 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.

What happens if my loved one dies without a Will?

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 ([EPTL 4-1.1](#)) provides for how those assets will be distributed among the surviving members of the decedent’s family.

Who gets what depends on who the living relatives are and their relationship to the Decedent. The family members who are entitled to a share of the Decedent's estate when there is no Will are called "distributees".

In the simplest terms:

If the Decedent has...	then
a spouse (husband or wife) and no children	the spouse inherits everything
children* but no spouse	children inherit everything
spouse and children*	the spouse inherits the first \$50,000 plus half of the balance. The children* inherit everything else.
parents but no spouse and no children*	the parents inherit everything
siblings (brothers or sisters) but no spouse, children*, or parents	the siblings inherit everything

* If a child dies before the Decedent and had children of their own, then the Decedent would have grandchildren. Those grandchildren would step into the Decedent's child's place and inherit in place of the child.

About Decedent's Children

For children to inherit from their parents, New York State requires that there is legal parent-child relationship. In most cases this is not an issue but it's not always clear.

- Adopted children Will inherit just like a biological child.
- Foster children and stepchildren Will not inherit unless they were legally adopted.
- Children born after the Decedent dies Will inherit.
- Children born outside of marriage, also called non-marital child, Will inherit from a male Decedent if [paternity](#) is established
- Grandchildren Will inherit only if their parent (the Decedent's child) dies before the Decedent died.

If the Decedent has no family at all, then the property Will go to New York State.

A certified copy of the death certificate needs to be filed with the administration petition and other supporting documents in the Surrogate's Court located in the county in which the decedent was domiciled (had their primary residence). There Will be a filing fee based on the size of the estate. It may be advisable to seek the assistance of counsel.

Who may be appointed to handle an estate proceeding?

If there is a Will that has been admitted to Probate, the person named as Executor or, if that person is deceased or unable to act, the person named as Successor Executor. If there is no Will, a person who qualifies under the laws of intestacy to serve as the Administrator. An Executor or Administrator serves as a fiduciary.

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

The original Will and a certified copy of the death certificate need 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 Will be a filing fee based on the size of the estate.

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

If the value of the estate is under \$50,000 (exclusive of certain types of property, the clerk of court can provide more information as to whether you qualify) and the decedent owned no real estate, a

small estate proceeding may be filed. 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](#).

*DIY (Do-It-Yourself)

My parent died and the only asset is their house. Do I have to file a proceeding in Surrogate's Court to have it turned over to my siblings and to me?

Not necessarily. By operation of law, real property vests in the estate's distributees at time of death. (Distributees are the persons entitled to share in an estate if there is no valid Will.) If your father died intestate (without a Will) and was not survived by a spouse, the property is owned by you and your siblings (as well as the children of any predeceased siblings) as of the time of his death. You should contact the appropriate tax office to see what the requirements are to list you as owners. You may also wish to consult a real estate attorney to prepare a deed to make the title to the property "cleaner." If your father died testate (with a Will), the property would be passed on in accordance with the terms of the Will and a probate proceeding may be necessary.

My parent died in a nursing home. I was told that I must file a proceeding in Surrogate's Court to obtain the money in their personal account. What proceeding do I file?

If that is the only asset or the value of the total assets are under \$50,000, (exclusive of certain types of property, the clerk of court can provide more information as to whether you qualify), you may file a small estate proceeding. If over the relevant monetary amount, you must file a full administration or probate proceeding.

My spouse died in a car accident. I have hired a lawyer to sue the driver of the other car. There are no assets other than the lawsuit. Does a proceeding need to be filed in Surrogate's Court?

Yes. A probate proceeding or administration proceeding will be necessary. The Executor or Administrator can bring the action in the appropriate court. When a settlement is reached or a trial has been concluded, a proceeding should be brought in Surrogate's Court to allocate and distribute the proceeds to the proper persons.

I am a surviving spouse who does not receive anything under the terms of my deceased husband's/wife's Will. What can I do?

Generally, a surviving spouse may file a "Right of Election" which would entitle him/her to take a share of the deceased spouse's estate. Generally, this "election" must be made within six months from the date letters testamentary issue to the executor, but in no event later than two years after the decedent's death; and may entitle her/him to the greater of \$50,000.00 or one-third of the net estate, if the decedent died on or after September 1, 1992.

How do I get a copy of a death certificate?

The funeral director usually purchases several originals for your use. You may also obtain them from

the Vital Statistics/Death Records Department in the municipality in which the person died. In New York City, contact the Department of Health.

How do I obtain guardianship over a child and a child's property?

The Surrogate's Court can provide forms and assistance on how to fill them out. You will need to file the child's birth certificate and other required information and pay a \$20.00 filing fee. Then, an investigation will begin and other procedures will be necessary. 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.

What does "presumptive mediation" mean?

The Westchester Surrogate's Court's ADR (alternative dispute resolution) program mandates, aside from appropriate exceptions, an automatic referral to our mediation program.