



Individual Retirement Accounts, 401(k) accounts and other pension plans where you have named a beneficiary are non-probate assets. The same is true of life insurance policies you own that name a beneficiary upon your death, and assets held in a Revocable Trust.

If you die without a Will, the laws of intestacy apply to your probate assets and who gets what depends on which relatives have survived you. If you are unmarried with no children, your assets go to your parents or, if they don't survive you, to your siblings, and so on down the line. If you are unmarried and have children, your assets will pass to your children in intestacy. If you are married with no children, all passes to your spouse. (Since July, 2011, New York recognizes same sex marriage for all purposes; however, Federal law still does not.) If you are married and have children, \$50,000 and one-half of your probate assets pass to

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Healthy Living


"Do I Need A Will?"

WILLS, TRUSTS & ESTATES: PLAIN & SIMPLE


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That is not as simple to answer as you may think. A Last Will and Testament directs the Executor named in your Will how and to whom your assets are to be disposed. If you do not have a Will, assets in your name when you die will pass under New York State's intestacy laws. However, only the disposition of your probate assets can be effected by your Will or by the laws of intestacy.

Probate assets are assets titled in your name alone. Assets that are held jointly that pass automatically to the joint title holder and assets that have a named beneficiary are non-probate assets and the directions in your Will do not affect the disposition of these assets (unless the named beneficiary is your estate). For example, bank and brokerage accounts held in joint accounts or real property held jointly with right of survivorship pass directly to the joint tenant.



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your spouse and the other half passes to your children; all does not pass to your wife or husband. Most married couples with children intend that their spouse have the use of all of their assets during the spouse's lifetime, so need a Will to insure this result.

If you have children *under age 18* and no Will, a guardian of the property will be appointed by the Court to administer the assets passing to your minor children. The children receive the assets outright when they reach the age of 18, a result most parents do not desire. In your Will, you can give your spouse the use of all of your assets during his or her lifetime, while still making sure to take advantage of estate tax exemptions. You can provide that any assets which are to pass to your children or grandchildren be held in trust until they reach a certain age or for their lives or longer. The trustee or trustees are appointed by you in your Will. If you have minor children, you most certainly need a Will, and if you have children of any age, you should consider creating trusts in your Will.

Anyone with a taxable estate (for 2012, \$1 million for NY and \$5,120,000 for Federal) and/or children should have a Will.

Anyone who does not want their assets to pass according to the laws of intestacy should have a Will. Even if you have a Revocable Trust, you should have a Will which at least directs that all of your probate assets be paid over to your Revocable Trust. (It is not uncommon for one to forget to transfer some or all of his or her probate assets to his or her Revocable Trust, assuming a Revocable Trust is the appropriate estate planning tool for that person.)

So, do you need a Will? It depends on the circumstances, but most individuals would choose to have a Will once the consequences of not having one are understood. Ms. Marcini is an attorney at the law firm of Farrell Fritz, P.C. concentrating in trusts, estates and tax law.

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