

WILLS, TRUSTS & ESTATES: PLAIN & SIMPLE “Do I Need A Will?”

That is not as simple to answer as you may think. A Last Will and Testament directs your Executor 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 affected 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 and real property held jointly with right of survivorship pass directly to the joint tenant. Individual Retirement Accounts, 401(k) accounts and other pension plans and life insur-

ance where you have named a beneficiary are non-probate assets. Assets held in a Revocable Trust are also non-probate assets.

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 pass to your children in intestacy. If you are married with no children, all passes to your spouse. If you are married and have children, \$50,000 and one-half of your probate assets pass to your spouse and the other half *passes to your children*. Most married couples with children intend that their spouse have the use of all of their assets during the spouse's lifetime, so you need a Will to ensure this result.

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 children or grandchildren be held in trust until they reach a certain age, or for their lives or longer. 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 2018, \$5.25 million for NY and almost \$11.2 million 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 to catch any probate assets you forgot to transfer to the trust.

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.

If there is a trusts and estates topic that you would like to know more about, please feel free to email me at pmarcin@farrellfritz.com and I will do my best to cover it in a future column. My previous columns are available on www.farrellfritz.com

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"I'm so glad we updated our wills. Farrell Fritz helped us understand all the recent changes and the best part is, we minimized our estate taxes. I feel so much more secure about our family's future."



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