

# But, I Don't Need a Will.

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One of the main objectives of a proper estate plan is to avoid New York State's laws from directing how your estate is divided at the time of your death.

If a person dies intestate (i.e. without a Will), the statutes of New York govern how their property is disposed of and how their loved ones are taken care of after their death. In most cases, this does not result in how the family wishes to have their assets owned and managed. All of this can be avoided if a Will is in place.

Specifically, if a husband and wife have children, but do not have a Will, the law provides that \$50,000 in cash or property plus one-half of the deceased spouse's estate will pass to the surviving spouse.<sup>1</sup> The rest of the deceased spouse's assets are divided equally among the children.<sup>2</sup> The New York directed structure of splitting ownership between a spouse and children is not always what the family would want. And if the children are minors, a full administration of the estate is necessary and the courts appoint what is known as a guardian ad litem for the children.

The surviving spouse must petition the court to act on behalf of the deceased spouse's estate.<sup>3</sup> Not only is this more expensive than simply filing a Will for probate, but the surviving spouse is not even guaranteed that he or she will be in control of the estate administration. A petition must be filed with the court so that the surviving spouse can apply for the authority to take care of the estate.<sup>4</sup> The decision is in the discretion of the judge.

Another area of immediate concern is that once assets are owned by the children directly, those assets are subject to the claims of the children's creditors, plaintiffs if they are sued and can possibly be considered assets that would be the subject of any matrimonial dispute if one should arise.

If a person dies without a Will and leaves no spouse or children, their estate passes to their then living parents (if any).<sup>5</sup> As a result, the deceased's parent's estate is increase which could result in estate taxes and hinder Medicaid eligibility.

These issues and headaches can be protected against with a properly prepared Will. And, because Wills are personal in nature, they can be changed in the future as a family's facts and circumstances change.

Please feel free to contact the attorney you typically work with in our office or any of the members of our [Estate Planning and Wealth Preservation Practice Group](#) if you have any questions on your estate plan.

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<sup>1</sup> N.Y. Est. Powers & Trusts Law § 4-1.1(a)(1) (Consol. 2016)

<sup>2</sup> *Id.*

<sup>3</sup> N.Y. Surr. Ct. Proc. Act Law § 1002 (Consol. 2016)

<sup>4</sup> *Id.*

<sup>5</sup> N.Y. Est. Powers & Trusts Law § 4-1.1(a)(4) (Consol. 2016)