

NEW YORK BREAST CANCER LEGAL RESOURCE GUIDE



Wills: What You Need to Know

**LEGAL WELLNESS INSTITUTE
at THE FAMILY CENTER**



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What is a Will?

A Will (also called a “Last Will and Testament”) is a legal document that lets you decide what happens to your property and assets after you pass away. If you have minor children, a Will is also the primary way to name the person you would like to be their guardian. A Will only goes into effect after you pass away — it does not affect your rights or property while you are alive.

Do I Need a Will?

There is no legal requirement to have a Will, but having one gives you control over important decisions that will otherwise be made for you by New York State law. A Will is especially important if you have minor children, because it is the way to formally express your wishes about who should care for them. It is also important if you have specific wishes about how your property or belongings should be distributed, or if you want to leave something to a person who would not automatically inherit from you under the law (such as an unmarried partner, a close friend, or a stepchild).

If you are managing a serious illness like breast cancer, creating a Will can be an important part of planning ahead and providing peace of mind for yourself and your loved ones — even if your prognosis is good.

What Can a Will Do?

A Will allows you to:

- Name a guardian for your minor children (under age 18) in the event of your death
- Decide how your property, money, and belongings are distributed
- Name an Executor — the person responsible for carrying out your wishes and managing your estate after you pass away (discussed more below)
- Make specific gifts of particular items or amounts of money to people or organizations you care about
- In some cases, set up a trust for the benefit of a minor child or a person with a disability

What Can't a Will Do?

A Will does not control everything that happens after you pass away. Some assets may pass to others automatically, outside of your Will, depending on how they are titled or who is named as a beneficiary. These include:

- Life insurance proceeds (which go to the named beneficiary on the policy)
- Retirement accounts like 401(k)s and IRAs (which also pass to named beneficiaries)
- Bank accounts with a “payable on death” designation
- Property owned jointly with another person with a right of survivorship
- Assets held in a trust



REMEMBER: *It is a good idea to review your beneficiary designations on these types of accounts periodically to make sure they reflect your current wishes, since they may override whatever your Will says.*

What Happens if I Don't Have a Will?

If you pass away without a valid Will, you are said to have died “intestate.” When this happens, New York State law determines who inherits your property, based on a formula that prioritizes your closest relatives. You will have no say in how your assets are distributed, and the result may not match your wishes.

Under New York’s intestacy law, your property would generally pass to your spouse and/or children first. If you do not have a spouse or children, it would go to your parents, then siblings, and so on through more distant relatives. Unmarried partners, stepchildren, close friends, and other important people in your life would not inherit anything under intestacy law, no matter how close your relationship.

If you have minor children and pass away without a Will, you will not have formally expressed your preference for who should be their guardian.

Who Can Make a Will?

In New York, you can make a Will if you are at least 18 years old and of “sound mind and memory,” meaning you understand what a Will is, what property you have, and who your family members and loved ones are. A diagnosis of serious illness does not prevent you from making a valid Will, as long as you understand these things at the time you sign it.

If you are considering making a Will, it is a good idea not to wait. Creating a Will while you are feeling well ensures that there are no questions later about whether you had the capacity to make one.

Can I Create My Own Will?

You may be tempted to write your own Will or use an online service to create one. We strongly recommend against this.

New York has very specific legal requirements for a valid Will. It must be signed by you in front of at least two witnesses. You must tell the witnesses that the document is your Will. The witnesses must also sign the document. These steps must be followed precisely — failing to do so can make the entire Will invalid, even if your wishes are clearly written on the page.

New York generally does not recognize handwritten (“holographic”) Wills that are not properly witnessed. Online will-making services may not account for New York’s strict requirements or for the specific circumstances of your life, such as guardianship considerations for your children or the impact a bequest could have on a beneficiary’s public benefits eligibility.

A Will is one of the most important legal documents you may ever sign. Getting it right is worth working with an attorney.



What is an Executor and How Do I Choose One?

An Executor is the person you name in your Will to carry out your wishes after you pass away. The Executor's responsibilities include locating and managing your assets, paying any outstanding debts or expenses, filing paperwork with the court, and distributing your property to the people you have named in your Will. Being an Executor is a significant responsibility, and the process can take months or longer.

When choosing an Executor, keep the following in mind:

- Your Executor should be someone you trust to be responsible, organized, and honest.
- They should be someone who is willing to serve. It is a good idea to have a conversation with the person before naming them.
- You can (and should) also name an alternate Executor, in case your first choice is unable or unwilling to serve when the time comes.
- Your Executor does not have to be a lawyer. They can hire an attorney or other professionals to help them with the process if needed.
- In New York, there are some restrictions on who can serve as an Executor (for example, a person convicted of a felony generally cannot serve). An attorney can help you navigate these rules.

What if I Want to Change My Will?

Your Will is not set in stone. You can change or revoke your Will at any time, as long as you have the mental capacity to do so. In fact, it is a good idea to review your Will periodically and especially after major life events, such as:

- A marriage, divorce, or separation
- The birth or adoption of a child
- The death of a spouse, family member, or someone named in your Will
- A significant change in your financial situation
- A change in your wishes about guardianship for your children

There are two ways to change a Will in New York. You can create a "Codicil," which is a formal amendment to your existing Will. Like a Will, a Codicil must be signed and witnessed according to New York's legal requirements. Alternatively, you can revoke your old Will entirely and create a new one. An attorney can help you decide which approach makes sense for your situation.

If you are a breast cancer patient or survivor in NYC and want to create or update a Will, or if you have other legal needs, contact the **Legal Wellness Institute** at **718.789.3841 x 150** or **LWI@thefamilycenter.org** to see if you are eligible for legal assistance through the Maite Aquino Program.

The information in this guide is not legal advice and is not a substitute for consultation with an attorney. No attorney-client relationship is created by receipt of this information.

