



Wills

Why Should I Prepare a Will?

The word “Will” might be a sad word and sometimes we consciously choose to avoid talking about it. Life, however, is filled with unexpected and unplanned events. In these crazy times, we need to embrace the positive, be grateful, and live every day like it’s our last day. And remember, a Will is nothing more than a **plan** to take care of those we love. Here are some very good reasons to have that plan.

I can Dispose of my Property as I Wish

If you, the Testator, die without a valid Will – the laws of intestacy decide how your property is distributed, to which family members and in what amounts, and not you. For instance, in New York State, your property would go one half to your spouse, even if you are separated,



and the other one half is equally divided between any/all of your living

children. If you do not have a spouse or children, then your property is distributed in a complicated network to other family members, i.e. parents, siblings, cousins, aunts/uncles.

With a Will, however, *you* as the testator decide **who**, whether it be a family member, or a friend, receives **what** property. For example, you want your son to have the car, your daughter to have the house, and Uncle Joe to take care of the family dog.

I can Arrange for Care of my Child

If you are married, your minor children would remain in the care of your spouse. If you are single, or your spouse is deceased, without a

Will, the Court decides who cares for your minor children. In your Will, you can choose an appropriate guardian for your minor children, and their property.

What Makes a Valid Will?

In New York State, there are specific legal requirements for a valid Will. Some of these are as follows:

- You, the testator, are of **sound mind** when you make and sign the Will. i.e. you are not suffering from dementia or under the influence of drugs or alcohol. This is called “testamentary capacity.”
- The Will must be in **writing**.
- You must sign the Will in front of **two witnesses** who also sign the Will, and their signatures are notarized, to make the Will “self-authenticating.” **(We can currently do all of this remotely via Zoom or Skype.)**

Can I Prepare My Own Will?

Technically, yes, you can prepare a simple valid Will, if it meets all of the legal requirements. This is not advisable, however, because if all of the requirements are not met, and/or it appears that the Will has been tampered with, there could be a “Will contest.” This means that your family members will dispute your Will by taking the matter to Probate Court, and your Will could be declared invalid and not legally binding.

In addition, some complex situations might arise as follows:

- You jointly own property with others in another state;
- You want your heirs to receive the property only if certain conditions are satisfied. For example, if your son successfully graduates from college, you



want him to run the family business, or if your daughter receives her nursing degree, you want her to take care of a disabled family member.

- You unintentionally write the Will with ambiguous or confusing language, causing a family dispute and then a Will contest.

To avoid family disputes or an invalid Will, call your attorney.

Can I Change my Will?

Yes, you can. You can simply revoke your valid Will by burning, tearing or cutting it apart. Or, you can prepare a *new Will*, stating that you revoke all prior Wills.

DIVORCE

Should I Pursue a Divorce?

Sometimes life throws us lemons, and things change in our relationship with our spouse. An ending can also mean a new beginning and a chance to start over on our own terms. Life is too short not to pursue a new happiness for ourselves. Here are some options for divorce.

Contested Divorce v. Uncontested Divorce

In a *contested divorce*, one party may not want the divorce, or the couples disagree on asset distribution, child custody, child support and/or spousal support. In this case, judicial intervention is needed, and oftentimes a lengthy court battle rages for years.

In an *uncontested divorce*, the couples would calmly sit down and come to an agreement on all of the important issues, and the matter is simply filed for the Judge to review and sign.

Why Uncontested Divorce is More Popular?

Less Time and Cost. A contested divorce can take years in the New York courts. The parties and their lawyers would have to go to court and spend time gathering paperwork, and attending conferences, depositions, or trials. Divorce lawyers charge \$350-450 per hour,



plus you pay all the filing fees. On the contrary, an uncontested divorce can be prepared in a couple days, and

once submitted to the Court for signature, signed within 4-6 months. This would cost \$1800 including the filing fees. All you have to do is go to your lawyer with the facts and she will prepare all the complex paperwork for Court submission.

Peace and Serenity. Obviously, a hotly contested divorce is emotionally exhausting for both the couple and their children. Courtroom fights and attacks, and the digging up of old memories are not good for anyone. (For example, like Charlie and Nicole, the couple in the movie *Marriage Story*.) In an uncontested divorce, the couple has already agreed on everything, and there is a certain peace in knowing it is done and you can move on with your new life.



Please call or text Neva at (917) 650-0678, or email hoffmaier@aol.com if you need remote legal assistance with your

Will or Divorce, or you need a remote Notary or Power of Attorney.

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