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Making Sense of Making a Will¹

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You have probably thought about it, maybe made a New Year's resolution to do it, but have you actually met with an attorney and executed a Will? If the answer is yes, congratulations! For many parents, however, the answer is no, and if you die without a Will, New York law determines who will manage your estate and to whom, and in what proportions, your property will pass. In some cases, the results might be the same as you would have determined, but in most cases it is preferable to have a Will drawn. Here's why:

INHERITANCE OF YOUR PROPERTY

In New York, if you are at least 18 years old and of "sound mind and memory," you may dispose of your property by Will. By making a Will, you can provide for loved ones in ways that take into account their individual needs. You can favor one person or disinherit another (except for your surviving spouse, who is entitled to \$50,000 or one-third of your "net estate," whichever is greater, whether or not you provide for him or her). If you die without leaving a valid Will, your property passes to your family members according to their relationships with you. If you are survived by a spouse and no descendants, your spouse inherits all of your property. Likewise, if you die leaving descendants but no spouse, your descendants will inherit your entire estate. If, however, you are survived by both a spouse and descendants, your spouse will inherit the first \$50,000 of your property and one-half of the remainder, and the balance will pass to your descendants. If you die without a spouse or descendants, your property will pass to other

¹ **This article is intended for informational purposes only and does not constitute legal advice. Before making any decisions regarding your Will or estate planning, you should consult a qualified attorney. This article was originally published in *LONG ISLAND WOMAN*, August 2001, p. 13.**

relatives. If your spouse has financial resources of his or her own, or if your children are from a prior marriage, you may prefer that your children inherit more than this statutory share.

Likewise, if your spouse needs greater financial support, you may not want your children to inherit anything until after your spouse's death. Your Will can include trusts to provide financial support for all your loved ones in accordance with their needs. Remember, without a Will only family members (which does include adopted persons and "non-marital" children) can share in your estate. It is therefore essential for unmarried couples to make Wills if they wish to provide for each other at death.

ADMINISTRATION OF YOUR ESTATE

Under a Will, you can appoint one or more individuals or institutions (banks or trust companies) of your choosing to act as your executor. Those you name are responsible for probating your Will ("proving" your Will in court) and administering your estate (collecting your assets, paying your debts, expenses and estate taxes, and distributing your property to your beneficiaries). While your estate is being administered, your executor must manage and invest your property. If you die without a Will, the court will appoint an administrator for your estate, who will perform the same duties as an executor but who must post a bond, which could be a considerable expense to your estate. Your heirs would be entitled to be appointed as administrator, even if they are not best suited for the job.

YOUR MINOR CHILDREN

Guardians of your minor children may be named in your Will. A guardian "of the person" will have custody of your children, while a guardian "of the property" will manage the property that passes directly to your child. You may choose one person for both jobs, or divide the duties. If you are the sole custodial parent, or if you and the children's other parent should

die in a common accident, you will want to ensure that your children are cared for by someone you select. If a guardian is not named in your Will, the court will appoint a guardian, which can understandably cause stress and animosity among your family and friends if more than one person seeks appointment as guardian. Depending on the size of your estate, you may wish to place your children's inheritances into trusts under your Will, thereby affording greater control over the assets for a longer period of time and also avoiding the need for a guardian of the property.

TAXES

Depending on the size of your estate and the law in effect at the time of your death, your estate may be subject to estate taxes. These taxes can be greatly reduced or even avoided through proper estate planning and Will drafting.

OTHER CONCERNS

For many of us, our pets are members of our family. But under most states' laws, New York included, pets are considered property, making it vital to consider your beloved companion's future after your death. In your Will you can name specific people to care for your pets, or you can authorize your executor to choose a desirable home. New York law also allows you to set aside funds for your pet's care and maintenance for its lifetime. It also is common to use your Will to leave property that might otherwise go to a distant or unknown relative to a favorite religious, civic or community organization.

Confronting the need for a Will and the issues that surround death is uncomfortable for many of us, especially when we are forced to consider our children's future without us. But a thoughtfully prepared Will, written when you are healthy and clear-thinking, gives you the peace of mind that you have provided for those most important to you.

Although it might seem easier and less expensive to buy a Will form or Will drafting software at a local office supply store and prepare your Will yourself, only an attorney experienced in estate planning and Will drafting is able to counsel you on the laws affecting your estate and help you accomplish all of your estate planning objectives. Because New York does not have certification requirements for legal specialties, it is important that you inquire into an attorney's experience during your initial interview.