



When There Is No Will

When a person dies without leaving a [Last Will and Testament](#), it's said that they died intestate. When a person dies intestate, that person's property is distributed according to the law. In New York, that law is found in [EPTL 4-1.1](#).

Who gets what depends on who the living relatives are and their relationship to the Decedent, the person who died. The family members who are entitled to a share of the Decedent's estate when there is no will are called "distributees".

In the simplest terms:

If the Decedent has...	then
a spouse (husband or wife) and no children	the spouse inherits everything
children* but no spouse	children inherit everything
spouse and children*	the spouse inherits the first \$50,000 plus half of the balance. The children* inherit everything else.
parents but no spouse and no children*	the parents inherit everything
siblings (brothers or sisters) but no spouse, children*, or parents	the siblings inherit everything

* If a child dies before the Decedent and had children of their own, then the Decedent would have grandchildren. Those grandchildren would step into the Decedent's child's place and inherit in place of the child.

About Decedent's Children

For children to inherit from their parents, New York State requires that there is legal parent-child relationship. In most cases this is not an issue but it's not always clear.

- Adopted children will inherit just like a biological child.
- Foster children and stepchildren will not inherit unless they were legally adopted.
- Children born after the Decedent dies will inherit.
- Children born outside of marriage, also called non-marital child, will inherit from a male Decedent if [paternity](#) is established
- Grandchildren will inherit only if their parent (the Decedent's child) dies before the Decedent died.

If the Decedent has no family at all, then the property will go to New York State.

Who Can File An Estate Proceeding

If there is a [Will](#), then the Executor named in the Will files for probate or a small estate in the Surrogate's Court in the county where the Decedent had their [primary residence](#).

If there is no Will, then there is a rule for who can file for administration or a small estate. In general, the "closest distributee" can file for administration or small estate. This means that the Decedent's husband or wife has a prior right over the Decedent's children to file. But if the Decedent didn't have a living husband or wife, then the Decedent's children have equal rights to each other. If the relative with the prior right does not want to administer the estate, then they can sign a renunciation and waiver. In the same way, if relatives have equal rights (such as

a Decedent's son and daughter) in an administration proceeding, then the Decedent's children sign waivers. This does not mean that they are giving up their share of the Decedent's estate.

Related Information:

- [Small Estate](#)
- [Administration](#)
- [Probate](#)
- [How to Get a Copy of the Death Certificate](#)

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Administration

- When a Person Dies with No Will

When the person who died (the Decedent) did not have a Will a proceeding called an Administration can be filed in the Surrogate's Court to collect and distribute their belongings. If the Decedent had less than \$50,000 of personal property and died either **with a Will** or **without a Will**, then a small estate, also called a Voluntary Administration proceeding, can be filed. If the Decedent had less than \$50,000 of personal property and died **with a Will**, a probate proceeding can be filed instead.

Administration is the process where the Surrogate's Court officially gives out Letters of Administration to a qualified distributee (heir) of the Decedent. Letters of Administration appoints a Decedent's distributee (heir) and gives them the authority to gather and give out the Decedent's property according to the law.

If the Decedent's only asset is real property (real estate), it may not be necessary to file an administration proceeding depending on who survives the Decedent. According to the law, real property is granted to the Decedent's distributees (heirs) at the time of death, which makes the distributees the owners of the property. It might be a good idea to contact a real estate attorney and the tax office to get more information about this.

Filing for Administration

In New York there is a rule for who can file the Administration proceeding. In general, the person who is the closest distributee (family member) to the Decedent files for administration. See order of priority of family member distributees who can file the Administration proceeding When There Is No Will.

The closest distributee files a copy of the paid funeral bill, a certified death certificate with the Petition for Letters of Administration and other supporting documents in the Surrogate's Court in the county where the Decedent had their primary residence. If you know the debts of the Decedent (such as medical bills, credit card bills, etc.) you should make a list of them. You should also make a list of what the Decedent owned at the time of death (such as bank accounts, house, stocks, etc.). You may be able to file the papers over the internet using NYSCEF, the New York State Courts Electronic Filing system. Check to see if you can do this on the e-filing County List for the Surrogate's Court in your county.

The Decedent's distributees must also be listed in the petition. Distributees must be served (officially given) a notice, called a citation. The citation gives the Surrogate's Court jurisdiction over them. This means that the Surrogate's Court has the power to decide the rights of the people involved. A citation tells the distributee that someone is asking for Letters of Administration to manage the Decedent's estate. The distributee can sign a waiver (giving up their rights) and consent to the appointment of the Administrator or come to court to disagree with the appointment. There may also be a waiver of bond included.

The filing fee is based on the dollar value of the estate.

Related Information:

- [When There Is No Will](#)
- [Fiduciary](#)
- [How to Get a Death Certificate](#)
- [Small Estate](#)