AGING IN PLACE

What Documents Do I Need & What Happens After My Death?

Publication by
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I. What are common mistakes and how do I avoid making them?

There are a number of mistakes that the Planning and Estates Law Project has seen over and over again. Many of these mistakes are merely incorrect assumptions and missteps causing more administrative complexity at death. Some of the mistakes can have significant impact on what happens to your assets at your death and who inherits your assets. These mistakes, and the way to avoid them, are highlighted in this section, and some are discussed in more detail below.

**Mistake:** Not planning for illness and death.

**How to avoid it:** It is entirely understandable that you do not want to contemplate dying or plan for it. But it is inevitable and none of us know when it will happen. Having basic planning documents in place is the only way to ensure your wishes will be carried out and to make sure your property goes to those you want to benefit. A proper Will and beneficiary designations are even more important if you want to benefit people you are not related to, such as a domestic partner, godchildren, stepchildren, etc., and if you want to disinherit a direct relation, such as a child, in favor of others, such as your grandchildren.

Telling your loved ones how you want your affairs handled in the event of incapacity and at death also provides them with a level of reassurance and closure. Planning for these eventualities is the responsible thing to do.
Sometimes people delay because they are not sure who they want to leave their property to. Remember that everything you do can be revoked while you are still alive and of sound mind. It is almost always best to have something in place than nothing.

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**Mistake:** Assuming that an agent named in a power of attorney can act after your death.

**How to avoid it:** Once you die, a power of attorney is no longer a viable document. In order for someone to act in your behalf after your death, someone will have to be appointed by the Surrogate’s Court as the executor or administrator of your estate. In addition to signing a power of attorney, you should also sign a Will to designate someone to act after your death.

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**Mistake:** Not taking advantage of beneficiary designations to pass assets at death.

**How to avoid it:** Probate is the process of proving to a court that a last will and testament is valid. Probate is only necessary for assets that do not pass by operation of law or by beneficiary designation. The process of passing assets at death is simplified and expedited if
beneficiary designations are used. Similarly, assets can pass by operation of law without the need for probate as a result of the way title to the assets is held. For example, if you and another person (such as a spouse or child) own real estate or a bank account as joint tenants with right of survivorship, the property or funds in the account will automatically pass to the survivor of you and the other person.

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**Mistake:** Not signing a Will correctly.

**How to avoid it:** There are certain statutory procedures that must be followed in connection with the signing of your Will in order for your Will to be admitted to probate. If your Will is signed under the supervision of an attorney, there is a rebuttable presumption that the Will is valid. Accordingly, whenever possible, have an attorney supervise the execution of the Will. This single fact creates a presumption that the Will was properly executed.

It is also best practice in New York for your Will to include a testimonium clause, an attestation clause, and a self-proving affidavit for subscribing witnesses.

**Testimonium clause and attestation clause:** The person signing the Will is called the “testator.” To constitute a valid will in New York, the instrument must be signed by the testator at the end of the document
in the presence of two disinterested witnesses (or, alternatively, the
testator must have acknowledged to the witnesses that the signature
was the testator’s), the testator must have declared before the
witnesses that the instrument is the testator’s will, and the witnesses
must each in the testator’s presence have signed the document at the
testator’s request and affixed his or her residence address.

**Self-proving affidavit:** The self-proving affidavit is an affidavit which is
signed by the witnesses that describes the formalities that were
observed in the execution of the Will and states the witnesses’
opinions of the testator’s state of mind. This affidavit must be sworn
to by the witnesses before a notary public. Although not required for
a valid Will, having this affidavit permits the Will to be “self-proved”
without any further testimony by the witnesses being required. The
affidavit must be signed by the witnesses in the presence of a notary
public.

If the testator chooses to sign a Will without the supervision of an
attorney, the testator should sign it in the presence of two
disinterested witnesses and the witnesses should remain together in
the room until everyone who has to sign has done so. The witnesses
are required to sign in the testator’s presence, and although
technically the witnesses do not need to sign the Will in the presence
of each other, it is best that they do. A Will does not need to be
notarized, but a notary needs to be present to notarize the self-
proving affidavit.
If a Will is not properly signed and witnessed, it is not valid and the testator’s wishes expressed in the document will not be followed.

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**Mistake:** Having a beneficiary of your Will act as a witness

**How to avoid it:** It is best practice for a beneficiary of the Will (directly or of a trust to which the Will pours into) never to act as a witness. A beneficiary of a Will is considered an interested witness. Because the law favors Wills over intestacy, in order to preserve the validity of the Will, when a beneficiary is a witness, New York law will convert the interested beneficiary into a disinterested witness by forcing the interested witness to forfeit their interests under the Will. The forfeiting of the interested witness’ interest is avoided if there is a third witness to the Will or if the interested witness is also an intestate distributee, in which case the interested witness will receive the lesser of their intestate share or the amount given to such interested witness under the Will.

Even if the beneficiary is not a witness, it is best practice for beneficiaries (other than spouses) to be sequestered from the Will signing as the beneficiary’s presence may bolster a charge of undue influence.
It is also best practice that none of the witnesses be closely related to a beneficiary under the Will. For example, if the testator leaves Jane a significant gift in her Will, not only should Jane not be a witness to the Will, Jane’s spouse and children should not be witnesses either.

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Mistake: Not letting the person you name as your executor or other person you trust know where your estate planning documents are located.

How to avoid it: Someone you trust should know where you keep your Will and other documents. Your Will should not be kept in a safe deposit box.

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Mistake: Signing multiple original Wills.

How to avoid it: Only sign one Will, not multiple originals, otherwise all Wills executed at the ceremony must be produced; failure to produce all executed copies creates a presumption that the testator revoked the Will.

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Mistake: Listing inaccurate or incorrect relationships in a Will

How to avoid it: You should be precise and accurate when you describe your relationships in all legal documents. If your niece is like the daughter you never had, she is still your niece and not legally your daughter. Describing her in your Will as a daughter confuses the court and unnecessarily complicates the filing of your Will for probate.

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Mistake: Not getting divorced following a permanent separation.

How to avoid it: If you are permanently separated from your spouse at death but still legally married, your spouse can attempt to assert rights against your estate. The best way to prevent this is by getting divorced. If religious or other reasons prevent you from divorcing, you should have your spouse sign a waiver of his or her rights against your estate and keep that document with your Will.

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Mistake: Unstapling a Will after it is signed.

How to avoid it: Unstapling the Will does not prevent the Will being admitted to probate but requires additional work by the proponent of your Will to explain why the Will is unstapled.
II. What if I become Incapacitated?

- Who will manage my financial affairs?

- Who will make health care decisions for me?

- How will doctors know my wishes for end-of-life care, including artificial nutrition and hydration, medication, organ donation, and my wishes regarding living at home?

- What documents do I need to have in place to avoid the cost and intrusion of a guardianship proceeding?

Durable Power of Attorney

1. Appoints one or more agents to act jointly or separately to make financial decisions for you – for example, to pay your rent, pay your bills, make investment decisions, file tax returns.

2. "Durable" means that the authority for your agent to act continues to be effective even if you become incapacitated.

3. You must specifically authorize your agent to make gifts and to make changes to the interest you have in the assets you own. If you do not specifically authorize your agent to make gifts, your agent is limited to
making gift up to $5,000 in the aggregate in each calendar year. In addition, you must specifically authorize an agent to make gifts to him/herself.

4. It is best if the power of attorney is effective immediately upon signing. Powers of attorney that require proof of incapacity are not recommended. If you are concerned about someone having the power to act before you are incapacitated, perhaps you should reconsider who you are appointing as your agent. It is important to appoint an agent who has integrity and whom you trust to act in your behalf.

**Health Care Proxy**

1. Designates an agent to make health care decisions for you if you cannot make them yourself.

2. Under New York law, only one person can act at a time as your health care agent. Your agent generally cannot be your attending physician.

3. State law will dictate who has the authority to make health care decisions for you if you do not name an agent. It is particularly important to name a health care agent if you do not want your spouse or children to make these decisions.

4. An agent is to be provided with medical information so that the agent can make necessary health care decisions. Additional health information
and information governed by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") can only be obtained if you sign a HIPAA Authorization form

Designates health care providers to disclose health care information.

Living Will

Sets forth your wishes regarding resuscitation, heroic measures to be used to be kept alive (e.g. respirator), and artificial nutrition or hydration.

Do Not Resuscitate Orders/Cardiopulmonary Resuscitation (CPR) and other Life-Sustaining Treatments/Medical Orders for Life-Sustaining Treatment (MOLST)

1. The MOLST is a New York State form issued by the Department of Health used to facilitate the communication of medical orders impacting end-of-life care if you have an advanced chronic or serious illness. The MOLST contains specific and actionable medical orders to help physicians and other health care providers discuss and convey your wishes regarding non-hospital cardiopulmonary resuscitation (CPR), Do Not Resuscitate (DNR) and Do Not Intubate (DNI) orders, and other life-sustaining treatment.
2. The MOLST form is a bright pink medical order form that must be signed by certain licensed physicians or nurse practitioners, and by you or your agent, that tells others your medical orders for life-sustaining treatment. All health care professionals must follow these medical orders as you move from one location to another, unless a physician or nurse practitioner examines the patient, reviews the orders, and changes them.

3. When you are at home, a properly executed MOLST form should be kept on the refrigerator, by the phone in the kitchen, or by your bedside so that trained medical personnel can locate it. State law requires a physician to review a non-hospital DNR order and record the review at least every 90 days.

III. Do I need a Will?

You need a Will to dispose of property at your death that is in your individual name and that has no designation as to what happens to it at your death.

You need a Will to dispose of your tangible personal property, such as jewelry and furniture, at your death.

IV. Can I write my own Will or print one off the Internet?

It is best not to write your own Will or supervise your own Will's execution.
Although a Will need not be complicated, the words must be precise so that the court and the parties to the proceeding know what is being disposed of and how it is to be disposed of.

New York has four formal requirements for the execution of a Will set forth in Estates, Powers and Trust Law (“EPTL”).

1. Will must be signed at the end by the testator;

2. Testator must sign in the presence of at least two witnesses, or acknowledge his or her signature to the witnesses;

3. Testator must acknowledge the document to be his or her Will; and

4. Witnesses must sign the Will as witnesses, preferably at the time the testator signs, but in no event more than 30 days after the testator signs.

5. In addition, best practice is for the witnesses to also sign a self-proving affidavit acknowledged before a notary stating such facts as would establish the genuineness of the Will, the validity of its execution, and that the testator at the time of execution of the Will was in all respects competent to make a Will and not under any undue influence or duress.
You should only sign ONE Will; you should not sign multiple originals.

V. What assets will not pass under my Will?

- Accounts and real property owned jointly with rights of survivorship.

- Real property and cooperative shares owned as tenants by the entirety (only applies to married couples).

- Property that passes by a beneficiary designation, i.e., life insurance, retirement accounts, and pensions.

- Property held “in-trust-for” someone else.

- Property held in a transfer on death registration form.

VI. What does the executor do?

Your Will names an executor who is responsible for collecting the assets in your estate, paying debts and expenses, and distributing the estate to those persons that are entitled to it under your Will.

Your named executor has no authority to act until your Will is probated or upon approval by the Surrogate’s Court of an application granting your executor preliminary authority pending probate of your Will (see Topic VIII, below).
The person you designate as your executor should be someone who has the practical skills to act. The role can be time-consuming and has the potential for liability if your executor does not handle your estate correctly.

**Executor compensation:**

1. For receiving and paying out all sums of money not exceeding $100,000 at the rate of 5%.

2. For receiving and paying out any additional sums not exceeding $200,000 at the rate 4%.

3. For receiving and paying out any additional sums not exceeding $700,000 at the rate of 3%.

4. For receiving and paying out any additional sums not exceeding $4 million at the rate of 2 ½ %.

5. For receiving and paying all sums above $5 MM at the rate of 2%.

Aggregate compensation is $34,000 on first $1 MM.

Aggregate compensation is $134,000 on first $5 MM.
VII. What happens if I die without a Will?

New York law determines who receives your assets at death.

The people who inherit are known as distributees.

Order of inheritance if you die without a Will:

1. If survived by a spouse and no children, the estate passes entirely to the spouse.

2. If survived by a spouse and children, spouse receives the first $50,000 plus one-half of your estate, and the children share equally in the remaining one-half. If any children have died before you, the predeceased child’s share goes to his or her children (your grandchildren) in equal shares.

3. If no spouse, no children and no grandchildren, then to parents, and if no parents, to grandparents, and if no grandparents, then to siblings. If any siblings predecease you, the shares of the predeceased siblings are divided among their children (your nieces and nephews).

4. If none of the above survive you, then one-half is to be divided among aunts and uncles and the children of any predeceased aunts and uncles (your first cousins) on the maternal side, and one-half to
aunts and uncles and the children of any predeceased aunts and uncles on the paternal side. If survived by aunts, uncles and/or cousins on only one side of your family tree, then all to them.

5. Lastly, if none of the above survive you, then to the children of your first cousins (your first cousins-once-removed), with one-half going to those on the maternal side and one-half going to those on the paternal side. If survived by children of first cousins on only one side, then all to them.

VIII. What is probate?

The process of proving that a Will is valid.

New York has solemn form probate, which requires that a Will be admitted to probate only after a formal proceeding in which notice is given to all interested parties.

1. Interested parties generally consist of all people who would inherit under law if decedent died without a Will, i.e., your distributees, as well as any person adversely affected by a codicil to the Will or the probate of a later Will, and the nominated executor.

2. Very little court supervision of estates occurs after your Will is probated.
IX. How can I avoid probate?

It is difficult to avoid probate altogether, but use of a revocable trust can help substantially.

Often referred to as a “Will substitute,” a revocable trust is a written trust agreement created while you are alive, which generally provides that your property be managed and used for your sole benefit while you are alive, and contains provisions, similar to a Will, that provide how your property is to be distributed as a result of your death.

Generally, you are the sole trustee while you are alive and capable of acting. Successor trustees are designated in the event of incapacity and death.

Revocable trusts provide NO tax savings.

You must re-title your assets (except for retirement accounts or other assets that pass by beneficiary designation or as a result of form of ownership) into the revocable trust during your lifetime. Any assets that are still in your own individual name at death and which do not pass by right of survivorship or beneficiary designation will need to pass through probate.

1. Re-titling your assets involves, among other things, opening new bank accounts in the name of the trustee of the revocable trust, the execution of new deeds transferring real property into the name of the
trustee and the issuance of new stock certificates for cooperative shares in the name of the trustee.

2. In order to maintain tax deferment, retirement accounts need to remain in the name of the individual. You can avoid them passing through probate by completing beneficiary designations.

Revocable trusts are used by New Yorkers generally to avoid the delay and expense of the probate process and to address privacy concerns. They are particularly useful when you have remote descendants or non-marital children who would require to be located and notified of death and have an opportunity to object to the probate of your Will.

Combined with a power-of-attorney and health care proxy, a revocable trust is an effective tool to avoid guardianship in the event of incapacity. You still need a Will if you have a revocable trust. It should be a Will that provides for assets to pass to your revocable trust and distributed in accordance with the terms of your revocable trust. This is generally referred to as a “pour-over” Will.

X. Can I disinherit my spouse and children under New York law?

Unless you and your spouse have entered into a marital agreement (a prenuptial agreement or post-nuptial agreement) addressing rights at death, a surviving spouse has a right to elect against the deceased spouse’s estate in the event of full or partial disinheritance. The election gives the surviving
spouse the right to one-third of certain testamentary assets or testamentary substitutes. If you give your spouse a portion of your assets that does not amount to the required one-third, she can elect against your estate to receive more so she receives the full one-third.

A. **Spousal Right of Election**

1. In general, a surviving spouse who receives less than one-third of the deceased spouse’s net estate outright, whether the estate property passes by Will, operation of law, or by beneficiary designation, is entitled to an elective share of the decedent’s estate provided the surviving spouse has not waived such right. The election gives the surviving spouse the right to one-third of certain testamentary assets (i.e., assets which pass under the Will) or testamentary substitutes (i.e., assets that pass outside the Will, such as jointly held property and accounts with beneficiaries), wherever situated. If decedent gives their spouse a portion of assets that does not amount to the required one-third, the surviving spouse can elect against the decedent’s estate to receive more so the spouse receives the full one-third.

2. Any person interested in obtaining a determination as to the validity or effect of an election to take a share of the decedent’s estate as a result of being a spouse must file a notice with the court within a certain period of time. SCPA § 1421; EPTL § 5-1.1-A
3. An election must be made within six months from the date of the issuance of letters testamentary or of administration, but in no event later than two years after the date of decedent’s death, unless such date is extended before expiration by an order of the Surrogate’s Court. EPTL § 5-1.1-A(d)

Surviving spouse is required to be at least a 50% beneficiary of a deceased spouse’s ERISA governed retirement benefit, such as a 401(k) plan.

You can disinherit your children.

XI. What if I live with my companion but we are not legally married?

New York does not have a concept of common law marriage, but it recognizes a valid common law marriage entered into in another state.

For same sex couples, a marriage substitute, such as a civil union in another state, registration as domestic partners, or adult adoption will not confer the status of marriage. The U.S. Supreme Court’s extension of the rights of same sex couples to heterosexual marriages only applies to actual marriages, not marriage substitutes.

1. As a result, the disposition of property at death by unmarried couples to one another, and the disposition of a single client’s property to a non-family member, can only be accomplished through legally binding writings. It is essential that unmarried couples who
wish to benefit the surviving partner and single clients have
documents (i.e., beneficiary designations for life insurance, IRAs, and
other retirement accounts) in place which set forth who is to get their
property at death.

2. While New York law voids bequests and beneficiary
designations between married couples upon divorce, testamentary
and transfer on death gifts between unmarried couples are not voided
upon separation of unmarried couples. It is important to review all of
your documents if there is a change in your relationship status. If the
unmarried couple is no longer together, each must change his or her
Will, IRA and life insurance beneficiary designations, joint account
designations, etc., in order to avoid the ex-partner from inheriting.

3. Unmarried couples should strongly consider having a revocable
count, which if funded during lifetime, will provide the surviving partner
access to the trust funds immediately at death. Otherwise, the partner
will be required to wait until the probate of the Will is complete before
he or she can benefit from the deceased partner’s assets.

XII. When will I have to worry about owing estate taxes?

You need to have a very large amount of assets or have given away a
very large amount of assets during your lifetime in order for your
estate to be subject to estate tax. The current exemption from federal
estate tax is $13,610,000 of an individual’s combined assets and prior
taxable gifts. The current exemption from New York estate tax is $6,940,000 of an individual’s combined assets and certain prior New York taxable gifts (for deaths that occur before 1/1/26). Real property located outside of New York is not counted as part of your New York taxable estate.

XIII. **Who will decide what happens to my body after I die?**

**What happens if I die alone at home?**

1. Police generally seal your residence if you are the sole occupant and you die at home.

2. Residence is usually not sealed if the occupant dies in the home while under hospice care, or if the occupant dies outside the residence, such as in a hospital, from natural causes.

3. Once your residence is sealed it can only be unsealed by:
   a. the police department;
   b. the Public Administrator; or
   c. a person authorized by an order or decree of the Surrogate’s Court.
4. People who the Surrogate’s Court will authorize to enter your sealed residence after your death (see *Exhibit A*):

   a. If your estate is greater than $50,000, your executor (if you die with a Will) or your administrator (if you die without a Will), upon his or her appointment by the Court.

   b. If your estate has a gross value of $50,000 or less, an executor named under a Will, or if you have no Will, your closest blood relative(s), can be appointed the “voluntary” fiduciary of your estate and be granted access to your residence. The process is simpler and less formal than probating a Will or getting an administrator appointed.

   c. If a person is an heir or an executor or beneficiary under a Will, such person can petition to search the sealed residence for a Will, insurance policy, cemetery deed, or to see what is inside (inventory). The Court may issue an order permitting temporary access to the residence by such person with a police officer present. Nothing, however, can be removed other than the 3 items mentioned.

5. The Public Administrator, which is an agency of the City of New York, may enter your residence if the death is reported to it and there is nobody else eligible or willing to administer your estate. Upon entering, the Public Administrator’s investigators will search for a Will
and other important documents such as bank account statements, and safeguard jewelry and cash.

6. Even though you are deceased, your landlord is not permitted to enter your residence after your death. The landlord may only enter on the permission of your estate executor/administrator or by court order. If there is no estate fiduciary, or if your estate fiduciary refuses to release the apartment back to the landlord, your landlord needs to bring an eviction proceeding against either your heirs or the executor/administrator of your estate.

7. Any property removed by police for safekeeping will be “vouchered” at the local precinct and stored there for a short period of time. If the property is not claimed, the police turn it over to the Public Administrator. The estate fiduciary appointed by the court can claim your “vouchered” property from the police department or the Public Administrator by providing proof of his/her appointment and photo identification.

What if I want to donate my organs?

1. An anatomical gift of all or any part of a body for any purpose may be made by any individual of sound mind who is at least 18 years of age. The gift is effective at death.
2. For potential donors, the New York Public Health Law contemplates that a gift of the organs, tissues, and eyes may be made for a number of different purposes as you specify, such as for science, research, medical teaching and education, and transplantation. A gift may be made either to a specified donee (i.e., to an individual in need of a transplant) or without specifying a donee. If the gift is made to a specific donee, delivery of the document to the donee is not necessary to validate the gift.

3. Although there are many options for effecting the gift, the surest method is the first option listed below, which is to enroll in the New York State Department of Health Donate Life Registry. The following documents can be used to make organ and tissue donations:

   a. **Donate Life Registry.** You may enroll in the New York State Department of Health Donate Life Registry on line at [www.nyhealth.gov](http://www.nyhealth.gov) or [www.donatelifeny.org](http://www.donatelifeny.org). In order to donate, you must complete a form including your name, address, certain demographics, birthdate, gender, eye color, and height. It also requires your driver’s license ID number.

   b. **Will.** You may make a gift of all or part of the body in a Will, which gift becomes effective upon your death. If the Will is presented as evidence of your direction, the Will can be acted on if such actions are taken in good faith. If the Will is not actually probated or if it is declared invalid for testamentary
purposes, the gift, to the extent that it has been acted upon in good faith, is nevertheless valid and effective.

c. **Organ Donor Card or Driver’s License.** You may make a gift using a card or other form of documentation “designed to be carried on the person.” This would include an organ donor card or driver’s license. This card or other document must be signed by you. It is not necessary for this form of documentation to be either witnessed or notarized. It is also not necessary for the document to be delivered to the donee of the gift prior to death in order to be effective.

d. **Voter Registration.** You may complete an organ donation form when you register to vote in New York. You must sign and date this form. Completing this form authorizes the Board of Elections to provide your name and identifying information to the Department of Health for enrollment in the *Donate Life Registry*.

e. **Living Will.** Your living will, which must be signed by the individual before two witnesses and signed by the two witnesses, may indicate your wish to donate organs.

f. **Health Care Proxy.** Your health care proxy may indicate your wish to donate organs. The New York health care proxy must be signed by the individual before two witnesses and signed by the two witnesses. The failure to include specific
instructions advising the agent of a wish to donate organs is not to be construed to imply a wish not to donate. If an individual has not specifically made a gift in a document, the agent for the individual has the priority to authorize consent to organ and tissue donation.

Who will control the disposition of my remains?

1. You may execute a document appointing an agent to control the disposition of your remains. See Exhibit B.

2. The person given control of the disposition of your remains can also be given authority to consent to organ or tissue donation (though a health care agent would have priority). Failure to state wishes in the disposition of remains document or other instructions is not to be construed to imply a wish not to donate.

3. You can sign a document giving specific instructions regarding where you want to be buried or whether you want to be cremated and what is to happen to your ashes. Best practice is not to use a Will for this purpose.

4. If you do not designate someone to dispose of your remains, New York law sets forth the persons who can make the decision.
XIV. Where should I keep my documents?

Certain important information should be maintained and updated on a regular basis and accessible to someone you trust. See Exhibit C. You should also provide your trusted contact with copies of all your documents. You should keep certain information in an envelope on your refrigerator so it is accessible to everyone, including the police or other person who might enter your home if you are unconscious. See Exhibit D.

You should give your health care proxy to your primary physician or other medical doctor caring for you. Often, you will sign more than one duplicate original health care proxy so that you can give one to each of your doctors. You can also give one to each of the named health care agents.

Your Will and other documents should be kept in a safe and secure location and accessible by someone you trust. Your Will should not be kept in a safe deposit box. Your trusted contact should also be given copies of your important documents.

You can leave your Will with the attorney who prepared it, or file it in Surrogate’s Court.
EXHIBIT A

NEW YORK COUNTY SURROGATE’S COURT
31 Chambers St • New York, NY 10007 • Monday-Friday, 9am-5pm • nycourts.gov/courts/1jd/surrogates

Has the Police Dept sealed your deceased loved one’s residence or invoiced property?
What you will need and which offices can help you access the residence and retrieve the property

☐ a. If • The value of the estate is $50,000 or less [see ▼] and
• There is no Will and you are a distributee/heir [see ■] or
• There is an original Will and you are named in it:

Administration Dept • Room 505 • (646) 386-5005
Application: Small Estates/Voluntary Administration
(see Voluntary Administration Checklist or DIY Form)
Necessary documents:
• Original certified death certificate (cannot be returned)
• Original Will, if any
• Copy of police property clerk invoice(s), if any

☐ b. If • The value of the estate is more than $50,000 [▼] and
• There is no Will and you are a distributee/heir [■]:

Administration Dept • Room 505 • (646) 386-5005
Application: Petition for Letters of Administration
(see Administration Proceeding Checklist)
Necessary documents:
• Original certified death certificate (cannot be returned)
• Copy of police property clerk invoice(s), if any

☐ c. If • The value of the estate is more than $50,000 [▼] and
• There is a Will and you are named in it:

Probate Dept • Room 504 • (646) 386-5004
Application: Petition for Probate
(see Probate Proceeding Checklist)
Necessary documents:
• Original certified death certificate (cannot be returned)
• Decedent’s Will

☐ d. If • You need to search the sealed residence for a Will, insurance policy, cemetery deed, or to see what is inside (inventory), the court may issue an order permitting temporary access to the residence with a police officer present; nothing can be removed other than the 3 items mentioned above [death certificate not required; see below]:

Miscellaneous Dept • Room 507 • (646) 386-5001
Application: Petition to Search Apartment
Necessary documents: Copy of death certificate or police dept, medical examiner or funeral home issued paper(s) indicating decedent’s date of death & address

☐ e. If • You are not a distributee/heir and do not know of a Will and there is no one else willing or able to administer the estate or there are no known distributees, the Public Administrator may be able to access the residence, retrieve invoiced property, and distribute it to those persons entitled to it under law.

Public Administrator of New York County • Room 311 • (212) 788-8430 • nyc.gov/site/nycountypa/index.page

▼ What counts as part of the estate? Decedent’s property/assets without a joint owner or named beneficiary.
• How to file the application: In person (recommended) or by messenger before 3:30pm, or by mail.
• What you will receive when your application ([a], [b] or [c] above) is complete: Certificates or Letters authorizing you to retrieve the property and get unrestricted access to the residence.
EXHIBIT B

NEW YORK STATE DEPARTMENT OF HEALTH
Bureau of Funeral Directing

Appointment of Agent to Control Disposition of Remains

I, ____________________________
(Your name and address)

being of sound mind, willfully and voluntarily make known my desire that, upon my death, the disposition of my remains shall be controlled by

______________________________
(name of agent)

With respect to that subject only, I hereby appoint such person as my agent with respect to the disposition of my remains.

SPECIAL DIRECTIONS:
Set forth below are any special directions limiting the power granted to my agent as well as any instructions or wishes desired to be followed in the disposition of my remains:

________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________

Indicate below if you have entered into a pre-funded pre-need agreement subject to section four hundred fifty-three of the general business law for funeral merchandise or service in advance of need:

☐ No, I have not entered into a pre-funded pre-need agreement subject to section four hundred fifty-three of the general business law.

☐ Yes, I have entered into a pre-funded pre-need agreement subject to section four hundred fifty-three of the general business law.

________________________________________________________________________
(Name of funeral firm with which you entered into a pre-funded pre-need funeral agreement to provide merchandise and/or services)

AGENT:

________________________________________________________________________
(Name)

________________________________________________________________________
(Address)

________________________________________________________________________
(Telephone Number)

SEE OTHER SIDE

DOH-5211 (10/15) Page 1 of 2

From: https://www.health.ny.gov/forms/doh-5211.pdf
SUCCESSORS:
If my agent dies, resigns, or is unable to act, I hereby appoint the following persons (each to act alone and successively, in the order named) to serve as my agent to control the disposition of my remains as authorized by this document.

1. First Successor:___________________________________________
   (Name)
   _________________________________________________________
   (Address)
   _________________________________________________________
   (Telephone Number)

2. Second Successor:________________________________________
   (Name)
   _________________________________________________________
   (Address)
   _________________________________________________________
   (Telephone Number)

DURATION:
This appointment becomes effective upon my death.

PRIOR APPOINTMENT REVOKED:
I hereby revoke any prior appointment of any person to control the disposition of my remains.

Signed this__________________ day of__________________,__________.
   _________________________________________________________
   (Signature of person making the appointment)

Statement by witness (must be 18 or older):
I declare that the person who executed this document is personally known to me and appears to be of sound mind and acting of his or her free will. He or she signed (or asked another to sign for him or her) this document in my presence.

Witness 1:______________________________________(Signature)
   _________________________________________________________
   (Address)

Witness 2:______________________________________(Signature)
   _________________________________________________________
   (Address)

ACCEPTANCE AND ASSUMPTION BY AGENT:
1. I have no reason to believe there has been a revocation of this appointment to control disposition of remains.
2. I hereby accept this appointment.

Signed this__________________ day of__________________,__________.
   _________________________________________________________
   (Signature of Agent)
**EXHIBIT C**

**IMPORTANT PERSONAL INFORMATION**
*(TO BE KEPT IN A PRIVATE AND SECURE LOCATION)*

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<th>Date:</th>
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<table>
<thead>
<tr>
<th>Name:</th>
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<tr>
<th>Address:</th>
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<tr>
<th>Date of Birth:</th>
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<tr>
<th>Social Security #:</th>
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<tr>
<th>Who to Contact:</th>
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<tr>
<th>Relationship:</th>
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<tr>
<th>Medical Doctor:</th>
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<tr>
<th>Allergies:</th>
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<tr>
<th>Hospital of Choice:</th>
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<tr>
<th>Health Care Proxy:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes ☐ No ☐</td>
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</table>

  If yes, where located:

<table>
<thead>
<tr>
<th>Living Will:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes ☐ No ☐</td>
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</table>

  If yes, where located:

<table>
<thead>
<tr>
<th>Will:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes ☐ No ☐</td>
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</tbody>
</table>

  If yes, where located:
<table>
<thead>
<tr>
<th>Location of House Keys and Other Keys:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Location of Important Papers:</td>
</tr>
<tr>
<td>Marital Status: Never Married ☐ Married ☐ Divorced ☐ Widowed ☐</td>
</tr>
<tr>
<td>Spouse: Yes ☐ No ☐</td>
</tr>
<tr>
<td>Contact Information For Spouse (if applicable):</td>
</tr>
<tr>
<td>Ex-Spouse(s) (if applicable):</td>
</tr>
<tr>
<td>Mother’s Maiden Name:</td>
</tr>
<tr>
<td>Father’s Name:</td>
</tr>
<tr>
<td>Marriage Certificate: Yes ☐ No ☐</td>
</tr>
<tr>
<td>If yes, where located:</td>
</tr>
<tr>
<td>Divorce Papers: Yes ☐ No ☐</td>
</tr>
<tr>
<td>Have you or your spouse filed for divorce?</td>
</tr>
<tr>
<td>Are you divorced? Where is copy of divorce decree?</td>
</tr>
<tr>
<td>Lawyer Used in Divorce:</td>
</tr>
<tr>
<td>Children: Yes ☐ No ☐</td>
</tr>
<tr>
<td>Contact Information For Children (if applicable):</td>
</tr>
<tr>
<td>Hidden Valuables: Yes ☐ No ☐</td>
</tr>
<tr>
<td>If yes, where located:</td>
</tr>
<tr>
<td>Bank Accounts:</td>
</tr>
<tr>
<td><strong>Passwords and User Names for:</strong></td>
</tr>
<tr>
<td>-----------------------------------</td>
</tr>
<tr>
<td>Online Accounts</td>
</tr>
<tr>
<td>Bank Cards</td>
</tr>
<tr>
<td>Other Accounts</td>
</tr>
</tbody>
</table>

| **Safe Deposit Box:** Yes ☐  No ☐ |
| If yes, where located:            |

<table>
<thead>
<tr>
<th><strong>Location of Key/Combination:</strong></th>
</tr>
</thead>
</table>

| **Home Safe:** Yes ☐  No ☐ |
| – Location of Key/Combination: |

| **Post Office Box:** Yes ☐  No ☐ |
| – Location of Key/Combination: |

<table>
<thead>
<tr>
<th><strong>Location of Stock and Lease to Cooperative Apartment (if applicable):</strong></th>
</tr>
</thead>
</table>

| **Pets:** Yes ☐  No ☐ |
| **Pet Medications:**    |

<table>
<thead>
<tr>
<th><strong>Veterinarian:</strong></th>
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<table>
<thead>
<tr>
<th><strong>Person to contact to care for Pets:</strong></th>
</tr>
</thead>
</table>

| **Car:** Yes ☐  No ☐ |
| Where is car parked? |

| **Home Owners Insurance:** Yes ☐  No ☐ |

| **Car Insurance:** Yes ☐  No ☐ |

<p>| <strong>Life Insurance:</strong> Yes ☐  No ☐ |</p>
<table>
<thead>
<tr>
<th>Category</th>
<th>Yes</th>
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<tbody>
<tr>
<td>Long-Term Care Insurance</td>
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<td>☐</td>
</tr>
<tr>
<td>Funeral Arrangements</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>Prearrangement/Prepayment</td>
<td>☐</td>
<td>☐</td>
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<tr>
<td>Funeral Home to Contact</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Disposition of Remains, Designation of Agent</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>Organ Donation</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>Donation of Body for Medical Research</td>
<td>☐</td>
<td>☐</td>
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<tr>
<td>Cremation</td>
<td>☐</td>
<td>☐</td>
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<tr>
<td>Religious Affiliation, if any</td>
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<td></td>
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<tr>
<td>Clergy</td>
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**EXHIBIT D**

**IMPORTANT INFORMATION IN THE EVENT OF DEATH, INCAPACITY, EMERGENCY, OR CATASTROPHE (TO BE KEPT IN AN ENVELOPE ON YOUR REFRIGERATOR)**

* * * * *

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**Health Care Proxy:** Yes □  No □  
If yes, where located:

**Living Will:** Yes □  No □  
If yes, where located:

**Will:** Yes □  No □  
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<td>Clergy:</td>
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