



# GUIDE TO NEW YORK CITY SURROGATE'S COURTS



*By the Planning and Estates Law Project*

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# GUIDE TO THE NEW YORK CITY SURROGATE COURTS

The **Planning and Estates Law Project (PELP)** of the City Bar Justice Center has created this guide to assist families and close friends who have lost a loved one in navigating Surrogate's Court - the court that has jurisdiction over estates (property left behind by someone who died). This guide provides information on how to file a petition to administer or probate an estate in Surrogate's Court. It does not provide guidance on other issues, such as unsealing apartments or guardianship. Please look to the end of this guide for resources on those procedures.

\*This guide is only applicable to the five boroughs of New York City: New York County (Manhattan); Kings County (Brooklyn); Bronx County (Bronx); Richmond County (Staten Island), and Queens County (Queens). Some Surrogate's Courts have their own specific rules and forms. This guide is presented for information purposes only and does not constitute legal advice. If you have any questions, please contact PELP or consult with an attorney.

## In which county should I file?

### What was the decedent's permanent address?

The county of the decedent's **domicile** or permanent address will determine where you will file.

- New York County (Manhattan)**
- Bronx County**
- Queens County**
- Kings County (Brooklyn)**
- Richmond County (Staten Island)**

### Other Helpful Links

- [Court Help: When Someone Dies](#)
- [Surrogate's Court Frequently Asked Questions](#)
- [Surrogate's Court Procedure Act](#)
- [Estates, Powers, and Trusts Law](#)
- [Accessing a Safe Deposit Box](#)
- [Help Entering a Sealed Apartment](#)

### Brief Explanations of Important Terms

#### **Decedent**

The person who has died. Sometimes referred to as the "deceased".

#### **Domicile**

A fixed, permanent, and principal home to which a person always intends to return.

#### **Estate**

All of the property of a decedent

#### **Surrogate's Court**

The court of a county in New York that has jurisdiction over the estate of an individual.

## Do you have an original Death Certificate?

If the decedent died in New York City, the Health Department will issue a death certificate. If a funeral home was involved, you may be able to request additional death certificates from the funeral director.

You can also order original death certificates from the Health Department. Only certain people can order death certificates.

If you need to make a correction to a death certificate:

- If it has been **within 12 months** of the death, the funeral home may be able to assist.
- If it has been **more than 12 months** since the death, you will have to submit an application to the NYC Health Department.


Visit [NYC.gov Department of Health: Birth and Death Records](https://www.nyc.gov/department-of-health/birth-and-death-records) for more information.

## What type of proceeding should be filed?

### Does the Decedent have a Will?

If the decedent has a Will, **do not** remove the staples from the Will. You will need to locate and obtain the original Will.

- If the decedent has a Will, you will file for **Probate**.
- If the decedent does not have a Will, you will file for **Administration**.
  - A person who dies without a Will is said to have died “**intestate**.” This also includes when a person’s Will is not valid.
- If the total estate value is \$50,000 or under, you will file for **Small Estates**, even if there is a Will.

 Note: If a person under 18 years old is involved in the estate, it may affect the type of estate proceeding that needs to be filed.

### **Administration**

If the decedent dies without a Will, the person’s property will be divided according to law.

### **Beneficiary**

A person who is receiving something from an estate or because of a legal arrangement/document. There may or may not be a Will.

### **Distributee**

A person who has a right to a share of an estate when there is no Will.

### **Executor**

The person(s) named in a Will to administer the decedent's estate.

### **Intestate**

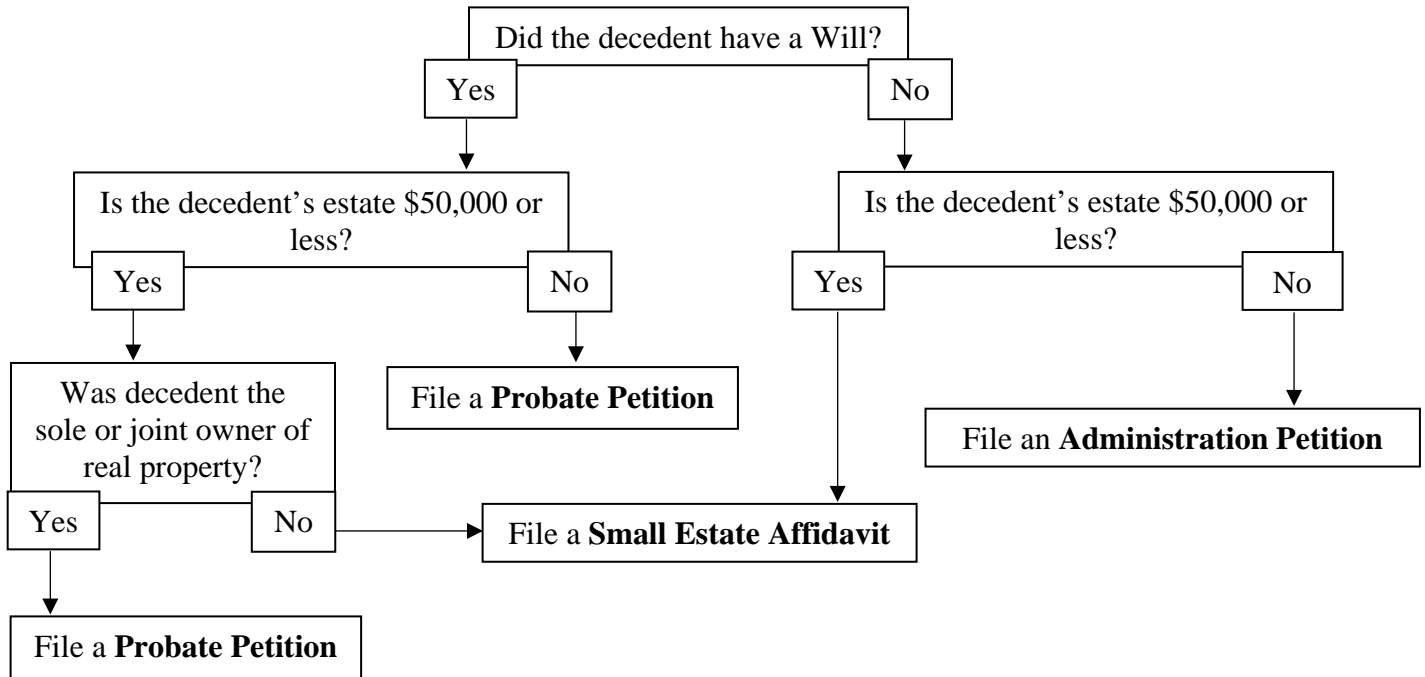
A person who dies without leaving a valid Will.

### **Probate**

If decedent dies with a Will, the person’s property is divided according to the Will.

## What Petition Should Be Filed? Flowchart

\*This chart is intended only to provide a simplified explanation of common Surrogate’s Court petitions.\*



### Small Estate Affidavit

The person handling the estate is called the “Voluntary Administrator.”

[Small Estate Affidavit](#)  
(Appendix A)

[DIY Small Estate Affidavit Program](#)

### Administration Petition

The person handling the estate is called the “Administrator.”

[Petition for Letters of Administration](#)  
(Appendix E)

[Administration Proceeding Checklist](#)  
(Appendix F)

### Probate Petition

The person handling the estate is called the “Executor.”

[Petition for Probate](#)  
(Appendix C)

[Probate Checklist](#)  
(Appendix D)



Note: Many different factors, such as ownership of real property, can affect what you need to do. If you have questions, please contact PELP or consult with an attorney.

## Understanding the Value of the Estate

The value of the estate is determined by adding up all the assets and property that are in the decedent's name. This does not include assets or property that are of joint ownership or if there is a named beneficiary (such as a Life Insurance policy).

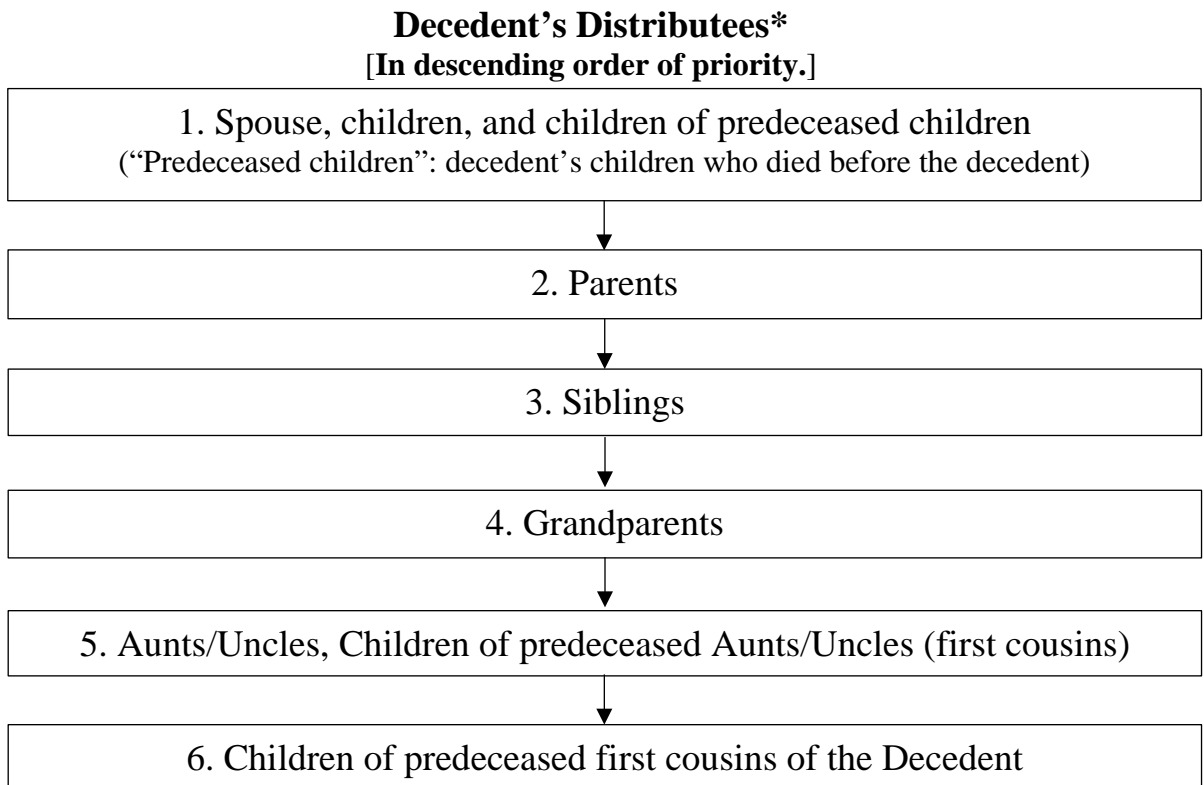
You will have to tell the court the estimated value of these assets. The total value of the estate will affect the type of petition you need to file.

Examples of assets: real property\*, bank accounts, CDs, safe deposit boxes, pensions, IRAs, stock certificates, partnership interests, cars, life insurance policies, jewelry, furniture, art.

\*"Real property" is like "real estate," in that it refers to structures such as homes, apartments, condominiums, and land. In New York, it does not include co-op apartments, which are considered personal property.

## Who are the Decedent's distributees?

When a person dies **intestate** (without a Will), there is an order of who will inherit from their estate. If there is no one in the nearest group, move onto the next group, in descending order. [NY EPTL § 4-1.1]\*



**\*Note: adopted children, half-blood relations, and children born after the death of the decedent may be included.\***

**Example:** John dies without a Will. At the time of death, he is married to Jane, and they have two adult children, Mark and Mary. John owned the family house in his name only; it is valued at \$500,000. John also had a bank account with a \$10,000 balance. This means that the total value of John’s estate is \$510,000. Jane, as his surviving spouse, will inherit the first \$50,000 of his estate and 50% of the remainder. Therefore, Jane will inherit \$280,000 of the estate. John’s children will equally share the other 50% of the remainder. Therefore, Mark and Mary will split the remaining \$230,000. Each child will inherit \$115,000.

❓ “NY EPTL” – The New York Estates, Powers and Trusts Law outlines the substantive rules on how a decedent’s property is to be distributed. Section 4-1.1 of the EPTL specifically covers how property is distributed when it is not mentioned in a Will. Please refer to this section for more details.

### **Are any of the people in the list above under 18 years old?**

In Surrogate’s Court, a person under 18 years old is called an “infant.” If there is an infant inheriting from an estate, a guardian may need to be appointed to manage that inherited property.

To protect the infant’s best interest, a guardian needs to be appointed by the court to be the **Guardian of the Infant’s Property**. The proposed guardian would need to file their petition in the county where the infant lives. If the infant does not live in New York State, the proposed guardian can also file in the county where the inherited property is located.

Anyone can petition to become the guardian of an infant’s property, but interested parties have the right to object to the guardianship. Interested parties can include either parent of the infant, a grandparent, or a sibling. As a proposed guardian, you must state to the court that you are over 18 years old, that you know the infant, have no impairments or addictions, have not been convicted of a crime, are able to take care of the infant, and believe that it would be in the infant’s best interest for you to be appointed as their guardian.

- [Guardianship of a Child: Surrogate Court – NY Courts CourtHelp](#)

### **Are any of the people in the list above mentally incompetent or incapacitated?**

A person who is incapacitated or intellectually or developmentally disabled may already have a guardian appointed to them. They may also be currently living in a residential facility or assisted care home. You will need to determine if they have a guardian and obtain the guardian’s address, as well as the name of any residential manager, if applicable.

- [Guardianship – NY Courts CourtHelp](#)
- [Surrogate Court Guardianship Forms – NY Statewide](#)

## Does the Decedent have any outstanding debts?

Keep careful notes of who is owed and the amount. You will need to tell the court what debts the Decedent still owed when they passed.

You may also have the Decedent’s mail forwarded to you. This is a way for you to see what accounts and services they used, such as bank accounts and credit cards. Keep copies of statements and bills. Visit “[Mail Addressed to the Deceased](#)” on USPS.com for more information.

If there is a funeral bill, do you have a copy? A copy of the funeral bill showing the balance is paid in full needs to be submitted to the Surrogate’s Court.

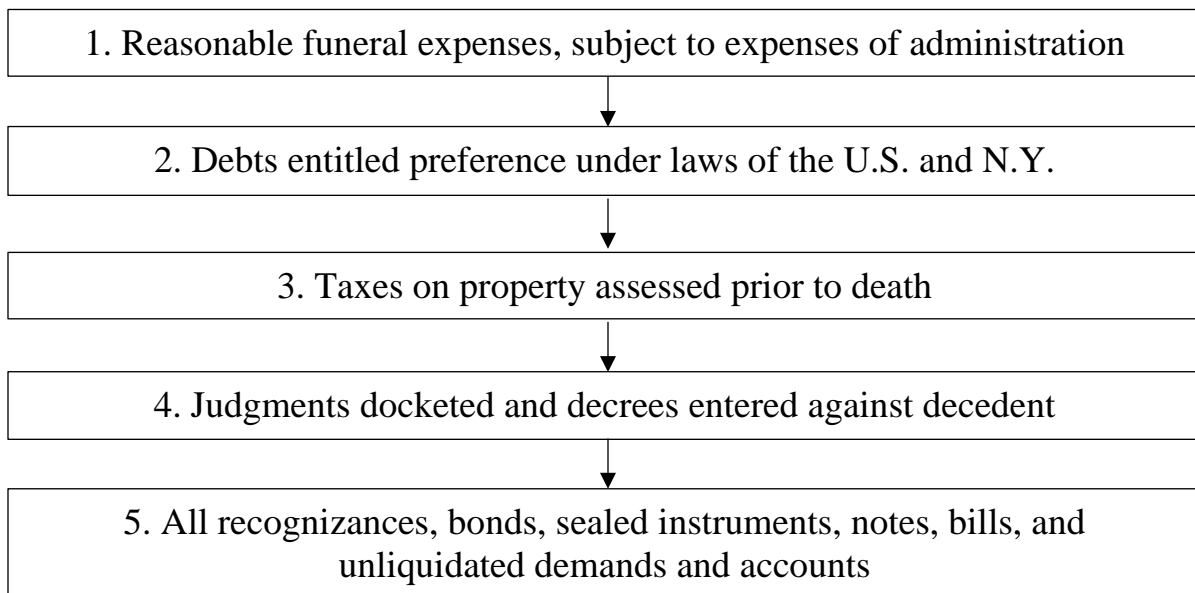
Examples of debts: medical bills, loans, income taxes, credit cards, mortgages, recurring services.

In New York, there is an order of who must be reimbursed or paid first. [NY SCPA § 1811]\* This is especially important when the estate has more debts than assets.

**?** “NY SCPA” – The New York Surrogate’s Court Procedural Act is the statute that covers procedures and practice in surrogate’s court. Section 1811 of the SCPA specifically discusses the order in which debts must be paid. Please refer to this section for more details.

**!** You are not personally liable for paying the Decedent’s debts, unless you were a cosigner or otherwise agreed to take on the debt in some way. All the Decedent’s debts will be paid from the assets of the Decedent’s estate.

### **Payment of Debts and Funeral Expenses** [In descending order of priority.]



## **Additional Requirements to Becoming Appointed**

The person who is tasked with handling the estate are fiduciaries and therefore owe a fiduciary duty to the estate. This means they have important legal duties and responsibilities to the estate.

### **Estate Bonds**

The Surrogate's Court may require that a bond be posted before someone can be appointed as a fiduciary of the estate. An estate bond is a type of court bond required to protect the interest of an estate and its beneficiaries in accordance with New York law. It is essentially an agreement that a surety bond company will compensate the heirs or creditors if the fiduciary of an estate fails to perform their duties. They are also known as executor bonds, fiduciary bonds, administrator bonds, and probate bonds.

You can find surety bond companies through your own research or from lists provided by the Surrogate's Court. Each bond company will have their own application process. Estate bond premiums vary depending on the value of the estate, the amount of bond coverage needed, and the financial credentials of the individual. Once an application is approved by a bond company, the applicant must pay the first year's premium for the bond.

Estate bonds also have annual premiums that need to be paid in addition to the bond amount. If you cannot afford the fee to get an estate bond, you might be unable to assume the fiduciary role. If you have a low credit score, you might not qualify for a bond. For those who cannot get an estate bond, the court may suggest finding an attorney who can serve as a professional fiduciary or, alternatively, find another family member who is better qualified, to settle the estate.

### **Felony Convictions**

A person with a felony conviction is not automatically prevented from being appointed as a fiduciary of an estate. However, the court has discretion to declare that person ineligible if the conviction was the result of a crime that "may be adverse to the welfare of the estate." [NY SCPA § 707(2)(b)]. This includes "crimes such as embezzlement or any crime where there was a misappropriation of money or a breach of fiduciary duty."

If you have a felony conviction, you can apply for a Certificate of Relief from Disabilities or a Certificate of Good Conduct to get back certain rights. Your eligibility for these certificates depends on multiple factors.

A Certificate of Relief from Disabilities can remove bars from applying to jobs, licenses, and public housing.

A Certificate of Good Conduct would be appropriate if you want a public office job, or you have been convicted of two or more separate felonies.



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If you are not sure if you have a felony conviction, you can try searching for your record in a few places:

- [New York State Division of Criminal Justice Services \(DCJS\)](#)
- [FBI Identity History Summary Check](#)
- [Criminal History Record Search \(CHRS\)](#) in the New York State court system

The [Planning and Estates Law Project \(PELP\)](#) at the City Bar Justice Center offers free legal assistance to individuals with limited resources with Surrogates Court and estates matters, as well as end-of-life planning.

To get assistance from the Planning and Estates Law Project, call **212-382-6756**.

You can also [Apply Online](#) for assistance from PELP.

## County Specific Contact Information

### New York County (Manhattan) Surrogate's Court

- [New York County Surrogate's Court Website](#)
- Administration and Small Estates Department
  - Phone Number: 646-386-5005
  - Email: [administration\\_general@nycourts.gov](mailto:administration_general@nycourts.gov)
- Probate Department:
  - Phone Number: 646-386-5004
  - Email: [probate\\_general@nycourts.gov](mailto:probate_general@nycourts.gov)

### Bronx County Surrogate's Court

- [Bronx County Surrogate's Court Website](#)
- Help Center
  - Email: [bxsurhelpctr@nycourts.gov](mailto:bxsurhelpctr@nycourts.gov)
  - English: (718) 618-1722
  - Español: (718) 618-1744
- Small Estate Department:
  - Phone Number: 718-618-2309
- Administration Department:
  - Phone Number: 718-618-2370
- Probate Department
  - Phone Number: 718-618-2365

### Queens County Surrogate's Court

- [Queens County Surrogate's Court](#)
- Help Center
  - Email: [qnssurr-helpcenter@nycourts.gov](mailto:qnssurr-helpcenter@nycourts.gov)
- Small Estate Department:
  - Email: [qnssurr-admin@nycourts.gov](mailto:qnssurr-admin@nycourts.gov)
- Administration Department:
  - Email: [qnssurr-admin@nycourts.gov](mailto:qnssurr-admin@nycourts.gov)
- Probate Department:
  - Email: [qnssurr-probate@nycourts.gov](mailto:qnssurr-probate@nycourts.gov)

## **Kings County (Brooklyn) Surrogate's Court**

- [Kings County \(Brooklyn\) Surrogate's Court Website](#)
- Help Center
  - Phone: 347-401-9090
- Small Estate Department:
  - Phone: 347-404-9690
  - Email: [KingSurr-Admin@nycourts.gov](mailto:KingSurr-Admin@nycourts.gov)
- Administration Department:
  - Phone: 347-404-9690
  - Email: [KingSurr-Admin@nycourts.gov](mailto:KingSurr-Admin@nycourts.gov)
- Probate Department:
  - Phone 347-404-9670
  - Email: [Kingsurr-probate@nycourts.gov](mailto:Kingsurr-probate@nycourts.gov)

## **Richmond County (Staten Island) Surrogate's Court**

- [Richmond County \(Staten Island\) Surrogate's Court Website](#)
- Help Center
  - Phone: 718-675-8508
  - Email: [richsurrhelpctr@nycourts.gov](mailto:richsurrhelpctr@nycourts.gov)

## **References**

New York Estates, Powers and Trusts Law (“EPTL”)

- [The New York State Senate](#)

New York Surrogate's Court Procedure Act (“SCPA”)

- [The New York State Senate](#)



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