NEW YORK NURSING HOME RESOURCE CENTER

The Family Guide to Surrogate's Court

What happens to an estate after a death, and who has the right to act



- Probate, administration and the small estate proceeding
- Who may be appointed, and who inherits when there is no will
- Filing fees, timing and the documents the court needs
- Why only the estate can sue over a death, and the two-year clock
- Creditors, Medicaid recovery, and a glossary of court terms

Free. Please read it, print it, and share it with anyone handling an estate after a death in a nursing home or hospital.

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BEFORE YOU START

How to use this guide

When someone dies in New York, their property, their debts and any legal claim they had are handled through Surrogate's Court. Nobody can collect the money, sell the house, or sue over the death until the court appoints someone to act for the estate.

This guide explains how that appointment works, who inherits, what it costs, and why the timing matters a great deal when the death itself may have been preventable. It is written for families, not for lawyers, but the statutory citations are given so that you or your attorney can check every statement in it.

Three things worth knowing now

1. **An appointment is not optional.**
   A will has no legal effect until a court admits it to probate, and a family member has no authority to act for an estate simply by being next of kin.

2. **If a lawsuit is possible, the appointment is urgent.**
   The deadline to sue over a death runs from the date of death. It does not pause while the family sorts out the estate.

3. **The simplified route will not support a lawsuit.**
   The small estate proceeding costs a dollar and is right for many families. It is the wrong choice if there may be a claim.

> A NOTE ON WHAT THIS IS
>
> This guide is general information about New York law. It is not legal advice, it does not create an attorney-client relationship, and it cannot account for the facts of any particular estate. Statutes, fees, court addresses and court personnel change. Anyone handling an estate — and particularly anyone whose family member may have died because of preventable harm — should speak with a lawyer promptly.



PART 1

Getting appointed

Everything else waits on this. This part covers which proceeding to file, what the court will ask for, who has the right to serve, and how to get authority quickly when something cannot wait.

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CHAPTER 1 · START HERE

Which proceeding applies

New York has a Surrogate's Court in each of its 62 counties. You file in the county where the person lived — not where they died, and not where the nursing home was. Which proceeding you file depends on whether there is a will and on what the person owned.

THERE IS A WILL

Probate

The executor named in the will petitions the court to prove the will is valid and to be appointed.

Gives you: Letters Testamentary

THERE IS NO WILL

Administration

The closest surviving relative petitions to be appointed. Property passes under the intestacy statute, not by anyone's choice.

Gives you: Letters of Administration

UNDER $50,000

Small estate

A simplified proceeding, with or without a will, for personal property under $50,000. The filing fee is $1.

Gives you: Certificates for named assets

IF A LAWSUIT IS POSSIBLE, DO NOT USE THE SMALL ESTATE ROUTE

The New York courts' own guidance says that where a wrongful death or other lawsuit may be brought, a probate or administration proceeding should be filed instead — even if the personal property is under $50,000. A voluntary administrator is appointed to collect specific listed assets. That is not the authority needed to sue.

What counts toward the $50,000

Only personal property: bank accounts, a car, personal belongings, an uncashed check. Property that passes outside the estate does not count — a jointly held account, an account payable on death, or life insurance with a named living beneficiary.

Real property is treated separately. If the decedent owned real property in New York in their name alone, the courts' guidance is that the estate is **not** a small estate. Real property held jointly with someone else does not disqualify it.

SCPA 1301, 1302, 1304(4)

Where the will must go

The original will must be filed with the court. A photocopy raises a presumption that the will was revoked and turns a routine proceeding into a difficult one. Do not remove staples from a will, write on it, or take it apart to scan it.

CHAPTER 2 · THE PROCESS

What actually happens, in order

Every estate follows the same spine. How long each step takes depends almost entirely on how complete the paperwork is when it is first filed.

1. **Locate the will and order death certificates**
   Order several certified copies — every bank, insurer and agency will want its own, and they will not accept a photocopy. Six is a reasonable starting number.

2. **Identify the family tree**
   The court needs to know every person with a legal interest, because each one must be given notice. Even in an entirely uncontested case, an incomplete family tree is the most common reason a petition sits for months.

3. **File the petition**
   A probate or administration petition, with the death certificate, the original will if there is one, and the filing fee. The fee is set by the value of the estate.

   SCPA 2402(7)

4. **Give notice to everyone with an interest**
   Those entitled to notice either sign waivers and consents in advance, which is much faster, or are served with a citation and given a return date on which to appear. Where a necessary party is a minor or otherwise under a disability and does not appear through a guardian, committee or conservator, the court appoints a guardian ad litem to protect that person's interest.

   SCPA 403

5. **The court issues letters**
   Letters Testamentary where a will is admitted; Letters of Administration where there is none. The court may restrict what the fiduciary is permitted to do. Where a lawsuit is contemplated, restricted letters are the norm rather than the exception.

6. **Marshal the assets**
   The representative collects the accounts, closes what needs closing and secures any property. Jointly held accounts, payable-on-death accounts and life insurance with a named beneficiary generally pass outside the estate and are not part of this.

7. **Pay debts, taxes and claims**
   Creditors are paid in the order the statute sets. Where the decedent received Medicaid, this step needs particular care.

8. **Distribute and account**
   What remains goes to the beneficiaries under the will, or to the distributees under the intestacy statute. The representative either files a formal accounting with the court or obtains signed receipts and releases from everyone entitled to share.

Who has the right to be appointed

Where there is no will, the statute sets the order of priority for letters of administration. A person ahead of you in the order can sign a renunciation so that you may serve instead. Renouncing the appointment does not give up an inheritance; those are two different things.

ORDER	WHO MAY BE APPOINTED
1	The surviving spouse
2	The children
3	The grandchildren
4	Either parent
5	The brothers or sisters
6	Any other eligible distributee who qualifies, with preference to whoever is entitled to the largest share of the estate

Where no one qualifies, or no one comes forward, letters go to the county's Public Administrator or chief fiscal officer.

SCPA 1001

Where several people have equal priority

Three adult children have the same priority as each other. The court may appoint one of them, or more than one jointly. In practice it is usually simpler for one to serve while the others sign waivers — joint fiduciaries must generally act together, which slows down everything from signing a bank form to retaining counsel.

Disqualification

Not every relative on the list is eligible. A parent who abandoned or failed to support the decedent may be disqualified from taking a share, and a surviving spouse may be disqualified on statutory grounds including abandonment. These questions come up more often than families expect, and they affect both who inherits and who may be appointed.

EPTL 4-1.4; EPTL 5-1.2

CHAPTER 4 · URGENT SITUATIONS

When you need authority immediately

Probate can take months, and an estate sometimes cannot wait — a business to run, a property to protect against a lapsing insurance policy, or a limitations period about to expire.

Preliminary letters testamentary

Where there is a will, the court can issue **preliminary letters testamentary** to the executor named in it once the probate petition has been filed. These give the executor essentially the powers of an administrator while the probate proceeding continues, including the power to take possession of, manage and sell devised real property and specifically bequeathed personal property unless the will or the court directs otherwise.

What they do not permit: paying or satisfying a legacy or a distributive share, and selling or disposing of specifically devised or bequeathed property without the consent of the beneficiary or an order of the court. The court can restrict them further, and can revoke them.

SCPA 1412

Temporary administration

Where there is no will, or where the will is contested and no preliminary letters are appropriate, the court can appoint a temporary administrator to preserve assets while the main proceeding runs. Ask about this if something is actively deteriorating.

> **TELL YOUR LAWYER ABOUT A POSSIBLE CLAIM AT THE FIRST MEETING**
>
> The single most useful thing a family can do is say, at the outset, that the death may not have been natural. It changes which proceeding is filed, what the letters say, how urgently the petition is pushed, and whether a temporary or preliminary appointment is worth seeking. It is much harder to fix later.

PART 2

Who inherits, and what it costs

Intestacy is a fixed formula that takes no account of who provided the care or what the person said they wanted. This part sets out that formula, the share a spouse cannot be deprived of, and what the court charges.

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CHAPTER 5 · INTESTACY

Who inherits when there is no will

Intestacy is a statutory formula. It does not account for who provided care, who was closest, or what the person told the family they wanted. Debts, administration expenses and reasonable funeral expenses come off the top first; what is left is distributed as follows.

SURVIVED BY	WHO TAKES WHAT
Spouse and children	The spouse takes $50,000 plus one-half of the remainder; the children divide the rest, by representation
Spouse, no children	The spouse takes the whole estate
Children, no spouse	The children take the whole estate, by representation
Parents only	The surviving parent or parents take the whole estate
Siblings only	The issue of the parents take, by representation
Grandparents or their issue	Half to each side of the family; if one side has no one, the whole to the other

EPTL 4-1.1

What “by representation” means

Where a child died before the decedent leaving children of their own, those grandchildren step into their parent’s place and divide that parent’s share. Half-blood relatives inherit as though they were whole-blood. A child adopted out of the family generally does not inherit from the birth family; an adopted child inherits from the adopting family as a biological child would.

What intestacy does not reach

A great deal of what families think of as “the estate” never passes through it. Jointly held bank accounts, accounts payable on death, retirement accounts and life insurance with a named living beneficiary, and property held in a trust all pass outside the estate and are untouched by the formula above. This is why a modest-looking estate can still involve substantial money, and why a family that expects to share equally sometimes does not.

CHAPTER 6 · THE SPOUSAL SHARE

A spouse cannot be disinherited

Where there is a will that leaves the surviving spouse little or nothing, the spouse may elect against it and take a statutory share instead.

The elective share is the greater of $50,000 or one-third of the net estate, counting certain lifetime transfers that the statute treats as part of the estate for this purpose. Where the net estate is worth less than $50,000, the share is the whole of it.

The deadline

The election must be made within **six months of the date letters are issued**, and in no event later than **two years after the date of death**. The Surrogate's Court may extend the six-month period before it expires, for a further period not exceeding six months on any one application, may relieve a default in certain circumstances, and may for good cause shown extend the time beyond two years from the death.

EPTL 5-1.1-A

Why it matters in a nursing home case

Where a long illness preceded the death, it is not unusual to find a will signed years earlier, or one signed late in life under circumstances the family questions. The right of election is a floor that does not depend on contesting the will at all, and the six-month clock is short. A spouse who is weighing whether to object to a will should be told about the election at the same time, because the two decisions interact.

Filing fees, and how long it takes

The filing fee is set by statute according to the value of the estate, and it is the same for a probate proceeding as for an administration proceeding.

VALUE OF THE ESTATE	FILING FEE
Less than $10,000	$45
$10,000 to under $20,000	$75
$20,000 to under $50,000	$215
$50,000 to under $100,000	$280
$100,000 to under $250,000	$420
$250,000 to under $500,000	$625
$500,000 and over	$1,250

A small estate (voluntary administration) proceeding costs $1. Fee tables published on county court websites are sometimes out of date; confirm the current figure with the clerk before filing.

SCPA 2402(7); SCPA 1304(4)

Who pays

Filing fees and administration expenses are paid from the estate, not out of a family member's pocket, once assets have been collected. Someone usually has to advance the filing fee; it is reimbursed.

How long

- **Uncontested administration, all waivers signed.** Letters in a matter of weeks.
- **Probate where distributees must be served by citation.** Several months, longer where someone cannot be located.
- **Contested will.** A year or more. Before deciding whether to file objections, a party may examine the attesting witnesses and the person who prepared the will — and may do so either before or after objections are filed. The estate bears the cost of certain of those examinations taken before objections, unless the court directs otherwise for good cause.

SCPA 1404



PART 3

When the death may have been preventable

This is where the two subjects meet. A claim arising from a death in a nursing home or hospital belongs to the estate, and the estate does not exist until the court says so. The deadlines do not wait for that.

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CHAPTER 8 · THE CLOCK

Why only the estate can sue

A family cannot sue a nursing home for a death directly. The claim belongs to the estate and can be brought only by a personal representative whom the Surrogate's Court has appointed.

That single rule produces the most expensive mistake families make. The appointment takes time; the deadline does not grant any.

> **THE TWO-YEAR CLOCK DOES NOT WAIT FOR THE COURT**
>
> A wrongful death action must be commenced within two years after the death. The period runs from the date of death. It does not pause while the family decides who will petition, gathers waivers, or waits for a return date. Because no action can be commenced before a representative is appointed, a delay in Surrogate's Court can extinguish the claim outright.

EPTL 5-4.1

The narrow exceptions

None of these is a reason to wait, and none should be relied on without advice.

- **A parallel criminal case.** Where a criminal action is brought against the same defendant arising out of the same event, the representative has at least one year from the termination of that criminal case — even if the two years has already run.
- **A claim the decedent held personally.** It is governed by its own limitations period, with a floor: where the person died before that period expired, the representative has at least one year from the death to sue.
- **An executor who refuses to act.** Where distributees are not participating in administration under a will whose executor will not bring the action, they are entitled to have an administrator appointed to prosecute it.

EPTL 5-4.1; CPLR 210(a)

What this means in practice

If a death may give rise to a claim, the Surrogate's Court appointment should be sought first and immediately — not after the house is sold, not after the accounts are closed, and not after the family has finished disagreeing about anything else. Everything else in an estate can wait. This cannot.

Two different claims

A death caused by someone else's conduct generally produces two separate claims. They compensate different people for different things, they are distributed under different rules, and the split between them can reverse who ends up with the money.

BELONGS TO THE FAMILY

Wrongful death

Compensates the distributees for their own financial losses: lost support, lost household services, lost parental guidance, and funeral and medical expenses.

Two years from the date of death

BELONGS TO THE ESTATE

Conscious pain and suffering

The claim the person had for what they endured before death. A claim for injury to person or property is not lost because the injured person dies; the personal representative may bring or continue it.

Its own deadline, never less than one year from death

EPTL 5-4.1; EPTL 11-3.2(b); CPLR 210(a)

What is recoverable

New York remains among the most restrictive states on this point. Wrongful death damages are limited to **pecuniary injuries** — economic loss. Grief, anguish and loss of companionship are not compensable. Interest on the principal sum runs from the date of death. Reasonable expenses of medical aid, nursing and attention incident to the injury causing death, and reasonable funeral expenses paid by the distributees or for which they are liable, are recoverable. Punitive damages are available for deaths on or after September 1, 1982 where they would have been recoverable had the person survived.

The Grieving Families Act, which would have allowed recovery for emotional loss and widened the class of people who could recover, passed the Legislature and was vetoed four times: on January 30, 2023, December 29, 2023, December 21, 2024, and December 5, 2025. It is not law.

EPTL 5-4.3

Why the allocation matters

- **Wrongful death proceeds** go to the distributees in proportion to the pecuniary injury each one suffered — not under the will, and not in equal shares. A dependent minor child's proportion will exceed that of a financially independent adult sibling. The proportions are fixed after a hearing, by the court having jurisdiction of the action where one has been brought, and otherwise by the Surrogate.
- **Conscious pain and suffering proceeds** pass through the estate: under the will if there is one, and under the intestacy statute if there is not. A will leaving everything to a friend or a charity would control this portion and not the other.

EPTL 5-4.4

A third claim the estate may hold

Where a nursing home deprived a resident of a right or benefit created for the resident's well-being — by contract, by State law, or by federal law — New York gives the resident a statutory cause of action that is separate from ordinary negligence. The statute expressly extends it to the resident's legal representative or estate.

What makes it different

- **A damages floor.** Compensatory damages may be no less than twenty-five percent of the daily per-patient rate of payment for each day the injury existed, unless the facility proves it exercised all care reasonably necessary to prevent the violation.
- **Punitive damages** where the deprivation was willful or in reckless disregard of the resident's lawful rights.
- **Attorney's fees** may be awarded to a successful plaintiff in the court's discretion, where justice requires.
- **It is cumulative.** The remedy is in addition to any other remedy available, including common-law tort claims, and no administrative remedy need be exhausted first.

Public Health Law § 2801-d

> **ONE REASON THE RECORDS MATTER SO MUCH**
>
> Because the claim turns on the deprivation of a specific right — a care plan that was never completed, a call bell that went unanswered, turning and repositioning that was charted but not done — the facility's own records are usually the proof. Those records should be requested and preserved early, which is one more reason the appointment should not be left until later.

Restricted letters and the compromise

Where a lawsuit is contemplated, the Surrogate typically issues letters that are **limited**: the representative may prosecute the action, but may not settle it or collect the proceeds without coming back to court.

That restriction is a protection, not an obstacle. It means that no one can quietly accept an inadequate settlement, and no one can divert the money before the court has decided who is entitled to it.

What the court does on the compromise application

- Inquires into the merits of the action and the adequacy of the amount proposed, and fixes an amount it considers adequate.
- Approves attorney's fees and the disbursements payable from the recovery.
- Allocates the recovery between wrongful death and conscious pain and suffering.
- Resolves liens and creditor claims.
- Fixes each distributee's percentage of the wrongful death portion.
- Lifts the restriction on the letters so the money can be distributed.

The court must act on the application within sixty days.

How the money is held

The defendant pays the settlement to the attorney for the representative, who holds it in an interest-bearing escrow account for the benefit of the distributees. Approved attorney's fees become payable from that account on submission of proof that a petition for allocation and distribution has been filed in Surrogate's Court; other expenses and liens — medical bills, funeral costs — are paid from the account once the funds are collected. The attorney who receives the payment continues as the estate's attorney until the final decree.

EPTL 5-4.6

Where a child or a person under a disability will share

Where any distributee is a minor, incompetent, incarcerated or otherwise under a disability, the court determines whether a guardian ad litem is required before any payment is made. Money due a child in excess of $10,000 cannot simply be handed to a parent: it goes to a court-appointed guardian of the child's property, or into an account from which nothing may be withdrawn without a court order until the child turns eighteen.

SCPA 2220

PART 4

Debts, Medicaid and getting organized

What the estate owes, what the State may take back, where to file on Long Island, and what to have in hand before the first meeting with a lawyer.

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CHAPTER 12 · DEBTS

Creditors and the seven-month rule

A frequently misunderstood provision. Where a claim has not been presented within **seven months** of the issuance of letters, a representative who has paid out in good faith is not chargeable for what was paid before the late claim arrived.

> **IT PROTECTS THE REPRESENTATIVE. IT DOES NOT BAR THE CREDITOR.**
>
> This is routinely described as a deadline for creditors to come forward. It is not. A creditor whose claim is not otherwise time-barred may still pursue it — against the people who received the money, rather than against the representative personally.

The seven months runs from the first issuance of letters to any fiduciary, including a temporary administrator or a preliminary executor. Later issuances do not restart it, and time during which no fiduciary holds office does not count.

SCPA 1802

The practical lesson

A representative who distributes an estate at seven months and one day, without having looked for creditors, has protected themselves and exposed the family. Where there is any real prospect of a claim — an unpaid facility balance, a hospital bill, an outstanding loan, and above all Medicaid — the right course is to resolve or rule it out before distributing, not to run out the clock.

Medicaid estate recovery

Most long-term nursing home care in New York is paid for by Medicaid. The State may recover what it paid from the estate of a recipient who was 55 or older when the assistance was provided, or who was in a nursing facility and not reasonably expected to return home. Distributing after seven months does not defeat that claim.

The limits, which are often overlooked

The statute restricts when the State may actually collect:

- Recovery may be made only **after the death of a surviving spouse**.
- No recovery while there is a surviving child who is **under 21**, or who is **blind or permanently and totally disabled**.
- Recovery against the home is further restricted where a qualifying sibling, or a child who lived there and provided care, meets the residency conditions the statute sets.
- The agency must waive recovery where it would work an **undue hardship**, under criteria the department establishes.

Social Services Law § 369(2), (5)

What to do

Where the decedent received Medicaid, the representative should establish the amount of the claim, test it against the limits above, and resolve or rule it out before distributing anything. This is also a point at which a recovery in a wrongful death or § 2801-d case interacts with the lien, and it should not be handled without advice.

CHAPTER 14 · WHERE TO FILE

The Long Island Surrogate's Courts

File in the county where the person was domiciled — where they actually lived and intended to remain. A person who entered a nursing home in another county usually remains domiciled where they lived before, but this is a question of fact and it is worth asking.

Nassau County

262 Old Country Road
Mineola, NY 11501
(516) 493-3800

Hon. David P. Sullivan, Surrogate

Suffolk County

320 Center Drive
Riverhead, NY 11901
(631) 852-1745

Hon. Vincent J. Messina, Jr., Surrogate

Filing practice

Original wills and death certificates generally must be filed in person. Motions are e-filed through NYSCEF; in Suffolk, motion papers that are hand-delivered rather than e-filed are deemed rejected. Each county sets its own protocols and they change, so check the court's page before making the trip.

For a county not listed here, the Unified Court System maintains information for all 62 Surrogate's Courts at **nycourts.gov/courthelp**.

> **CHECK THE JUDGE BEFORE YOU RELY ON IT**
>
> Court personnel change, and some published court pages are slow to catch up. Confirm the sitting Surrogate and the current telephone number on the court's own website before a filing deadline turns on it.

CHAPTER 15 · PREPARATION

What to gather before you see a lawyer

A first meeting is far more productive with these in hand. You do not need all of them to start.

Documents

- ☐ Certified death certificates — order at least six.
- ☐ The original will, if one exists, and any codicils. Do not remove staples or write on it.
- ☐ Statements for every account, showing how each account is titled and any named beneficiary.
- ☐ Deeds and mortgage statements for real property, showing how title is held.
- ☐ Life insurance policies and beneficiary designations.
- ☐ The last two years of tax returns.
- ☐ Outstanding bills, including the funeral bill and any nursing home or hospital balance.
- ☐ Any Medicaid correspondence.

Information

- ☐ A list of every surviving relative in the categories in Chapter 3, with current addresses.
- ☐ Dates of birth for anyone under 18, and a note of anyone who is incapacitated.
- ☐ Any relative who cannot be located, and what is known about them.
- ☐ Whether anyone has already signed anything, or has taken possession of estate property.

If the death may have been preventable

- ☐ The facility's name and the exact dates of residence.
- ☐ The hospital or hospitals involved, and dates of each admission.
- ☐ The names of anyone — staff or family — who told you what happened.
- ☐ Photographs, if any were taken, with their dates.
- ☐ Any written complaint already made, and any response received.
- ☐ Any letter from the Department of Health.

CHAPTER 16 · QUESTIONS

Frequently asked questions

My mother died in a nursing home. Do we have to go to Surrogate's Court if she had almost nothing?

If her personal property was under $50,000 and she owned no real property in her sole name, the small estate proceeding may be all you need, and it costs $1. But if there is any possibility of a claim arising from her death, file a full administration or probate proceeding instead. A voluntary administrator cannot bring a lawsuit.

The nursing home says it will only release records to the executor, and nobody has been appointed yet.

That is a common and legitimate obstacle, and it is one of the better reasons to start the proceeding early. A HIPAA authorization signed by the person before death, or by a personal representative after appointment, is generally what a facility requires.

Can we all be appointed together?

Where several distributees have equal priority, the court may appoint one or more than one jointly. In practice it is usually simpler for one to serve while the others sign waivers, which does not affect anyone's inheritance.

Does a will avoid Surrogate's Court?

No. A will has no legal effect until a court admits it to probate. What avoids Surrogate's Court is holding assets so that they pass outside the estate — jointly, in trust, or with a named living beneficiary.

How long do we have to open the estate?

There is no fixed deadline to probate a will or to seek administration, and estates are sometimes opened years later. But every claim the estate might bring has its own deadline, and those run from the death or the injury, not from the appointment. If a claim is possible, the appointment is urgent.

We disagree about who should serve. What happens?

The statutory order of priority decides it unless the person with priority renounces. Where people of equal priority disagree, the court chooses, and it can appoint someone neutral. A dispute of this kind is expensive and slow, and in a case with a limitations period running it can be ruinous. It is worth a great deal to settle it.

Someone has already taken money out of my father's account. Can that be undone?

Possibly. Surrogate's Court has a proceeding for discovering and recovering property that belongs to an estate, and the court can compel a person to appear and be examined about it. Raise it with counsel early; the longer money has moved, the harder it is to trace.

Who pays the lawyer for the estate work?

Legal fees for administering an estate are generally paid from the estate and are subject to review by the court. Where a wrongful death action is settled, the Surrogate reviews and approves the attorney's fee and the disbursements as part of the compromise proceeding.

CHAPTER 17 · REFERENCE

Glossary of court terms

Administrator
The person the court appoints to act for an estate when there is no will.

By representation
The method of dividing a share among the children of someone who died before the decedent.

Citation
The court's formal notice to everyone with a legal interest, telling them when to appear if they wish to object.

Codicil
A document amending a will. It must be filed with the will.

Compromise proceeding
The application asking the Surrogate to approve a settlement of a death claim, fix fees, and allocate the money.

Decedent
The person who died.

Decree
The court's final written order in a proceeding.

Distributee
A relative legally entitled to a share when there is no will. Not the same as a beneficiary named in a will.

Elective share
The minimum a surviving spouse may claim against a will.

Executor
The person named in a will to administer the estate, once the court has appointed them.

Fiduciary
The umbrella term for an executor, administrator, trustee or guardian — anyone holding property for someone else.

Guardian ad litem
An attorney the court appoints to protect the interest of a minor or a person under a disability in a particular proceeding.

Intestate
Dying without a valid will.

Letters
The certificate proving the appointment. Banks, insurers and opposing counsel will ask for it, and will often require one issued within the last 60 days.

Letters of Administration
Letters issued where there is no will.

Letters Testamentary
Letters issued where a will has been admitted to probate.

Limited or restricted letters
Letters permitting the representative to prosecute a lawsuit but not to settle it or collect the money without further court approval.

Marshal
To collect and secure the estate's assets.

Pecuniary injury
Economic loss. The only category of wrongful death damages New York allows.

Personal representative
Executor or administrator. The person with authority to bring a lawsuit for the estate.

Preliminary letters
Temporary authority given to a named executor while probate is pending.

Probate
The proceeding to prove a will is valid and appoint the executor.

Public Administrator
The county official who administers estates where no eligible person qualifies or comes forward.

Renunciation
A signed form by which a person with equal or higher priority steps aside. It does not give up their inheritance.

Survival action
The claim for what the person endured before death, which survives them and passes through the estate.

Voluntary administrator
The person who files the small estate affidavit. Appointed to collect specific listed assets, and not able to bring a lawsuit.

Waiver and consent
A signed form by which a person entitled to notice agrees to the appointment without being served with a citation.

Wrongful death action
The claim for the distributees' own economic losses caused by the death.

REFERENCE

Sources and a word of caution

Every rule stated in this guide was checked against the Legislature's published statutory text and the courts' own published information in October 2026.

Statutes relied on

Surrogate's Court Procedure Act §§ 403, 1001, 1301, 1302, 1304, 1404, 1412, 1802, 2220, 2402.

Estates, Powers and Trusts Law §§ 4-1.1, 4-1.4, 5-1.1-A, 5-1.2, 5-4.1, 5-4.3, 5-4.4, 5-4.6, 11-3.2.

Public Health Law § 2801-d. **Social Services Law** § 369. **CPLR** 210.

Court addresses, telephone numbers and filing protocols are taken from the New York State Unified Court System's published directories and from the Nassau and Suffolk Surrogate's Courts' own protocols.

Why you should still check

Fee schedules published by individual counties are sometimes years out of date, and some official court pages continue to list judges who are no longer sitting. Statutes are amended. Where anything in this guide would determine what you do in a particular estate, confirm it against the current source or ask a lawyer.

Who produced this guide

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The firm is a New York plaintiff's practice representing residents and families in nursing home neglect and abuse, medical malpractice, construction accident, catastrophic injury and wrongful death matters, in the State courts and in the Eastern and Southern Districts of New York.

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