

THE COMPLETE GUIDE TO Wills & Trusts in New York

2026 EDITION

A Free Comprehensive Resource from law-trust.com

19.8 million

Population

\$50,000

Probate Threshold

Yes

State Estate Tax

\$2,000

Attorney Fee (from)

■ What's Inside This Guide

- ✓ State probate laws & thresholds
- ✓ Estate tax analysis
- ✓ Will vs. trust comparison
- ✓ Step-by-step will creation checklist
- ✓ Trust setup guide
- ✓ Common mistakes to avoid
- ✓ State-specific forms & requirements
- ✓ Attorney cost estimates
- ✓ Online tool comparison
- ✓ State-specific FAQs
- ✓ Official court & bar resources

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Chapter 1: Introduction — Estate Planning in New York

Estate planning is one of the most important things you can do for your family — yet most Americans put it off. In New York, with 19.8 million residents, the majority of adults still don't have a valid will.

This guide was written specifically for New York residents. While general estate planning principles apply across all 50 states, the details — probate thresholds, tax rules, court procedures, required forms — are state-specific. Using a generic guide or out-of-state template can lead to costly mistakes.

Why Estate Planning Matters

- Without a will, the state decides who inherits your assets — and it may not be who you'd choose.
- Without a healthcare directive, doctors and hospitals may be forced to take actions against your wishes.
- Without a power of attorney, your family may need to go to court just to manage your finances if you become incapacitated.
- Without proper planning, your family could face months of probate court, thousands in legal fees, and significant family conflict.
- With proper planning, you can minimize taxes, protect assets, and make sure your legacy goes exactly where you intend.

What Documents Make Up a Complete Estate Plan?

Document	Purpose	Urgency
Last Will & Testament	Distributes assets, names guardian for minor children	HIGH
Revocable Living Trust	Avoids probate, manages assets during incapacity	MEDIUM-HIGH
Durable Power of Attorney	Authorizes financial decisions if incapacitated	HIGH
Health Care Proxy + Living Will	Directs medical treatment decisions	HIGH
HIPAA Authorization	Allows medical providers to share information	MEDIUM
Beneficiary Designations	Controls who receives retirement/insurance accounts	HIGH

Chapter 2: New York Probate Laws & Overview

Probate is the court-supervised process of validating a will and distributing assets after death. In New York, probate is handled by the Surrogate's Court.

Probate Threshold & Process

In New York, estates with gross assets over **\$50,000** generally require formal probate administration. Estates below this threshold may qualify for simplified procedures.

Key Fact	Detail
Probate Court	Surrogate's Court
Probate Threshold	\$50,000
Average Cost	\$10,000–\$30,000+
Typical Duration	6–18 months (varies)
Will Witnesses Required	2
Notarization Required	No
Self-Proving Affidavit	Available
Holographic Will	Check state law

New York-Specific Probate Features

- New York's Surrogate's Court handles all probate matters — specialized court just for estates
- Non-community property state — each spouse owns their own separate property
- NY allows 'statutory short form' power of attorney for simplified POA documents
- Estate tax 'cliff' provision — estates slightly over exemption pay tax on entire estate
- New York City residents may face additional estate planning considerations due to high asset values

How to Avoid Probate in New York

Revocable Living Trust: Hold assets in a trust — trust assets pass directly to beneficiaries without probate.

Beneficiary Designations: Life insurance, IRAs, 401(k)s, and annuities with beneficiaries named pass outside probate.

Joint Tenancy / JTWRROS: Property held in joint tenancy with right of survivorship passes automatically to the survivor.

Transfer-on-Death (TOD): Bank accounts, brokerage accounts, and sometimes real estate can have TOD designations.

Payable-on-Death (POD): Bank accounts with POD designations pass directly to named beneficiaries.

Simplified Procedure: Estates under \$50,000 may qualify for simplified administration.

Key New York Statutes

- EPTL §3-1.1
- EPTL §7-1.17
- NY SCPA §1402
- NY Tax Law §952

Chapter 3: Estate Tax Analysis for New York Residents

New York has a state estate tax with a 2026 exemption of approximately \$7.16 million. Rates range from 3.06% to 16%. Beware the 'cliff' — if your estate exceeds the exemption by more than 5%, the entire estate is taxed (not just the excess).

Federal Estate Tax (2026)

The federal estate tax applies to estates over approximately \$13.61 million per individual (\$27.22 million for married couples with proper planning). The Tax Cuts and Jobs Act of 2017 doubled the exemption, but without Congressional action, it is scheduled to revert to roughly \$7 million per person in 2026. Estate planning done now should account for potential exemption changes.

Taxable Amount Over Exemption	Estate Tax Rate
\$0 – \$10,000	18%
\$10,001 – \$20,000	20%
\$20,001 – \$40,000	22%
\$40,001 – \$60,000	24%
\$60,001 – \$80,000	26%
\$80,001 – \$100,000	28%
\$100,001 – \$150,000	30%
\$150,001 – \$250,000	32%
\$250,001 – \$500,000	34%
\$500,001 – \$750,000	37%
\$750,001 – \$1,000,000	39%
Over \$1,000,000	40%

Estate Tax Planning Strategies

Unlimited Marital Deduction: Assets passing to a surviving US citizen spouse are completely exempt from federal estate tax.

Annual Gift Exclusion: In 2026, you can gift up to \$18,000 per person per year without any gift tax consequences. Married couples can combine for \$36,000 per recipient.

529 / Education Gifting: You can superfund a 529 plan with up to \$90,000 (\$18,000 × 5 years) per beneficiary without using lifetime exemption.

Irrevocable Life Insurance Trust (ILIT): Life insurance proceeds held in an ILIT are excluded from your taxable estate while providing liquidity for estate expenses.

Charitable Giving: Charitable donations reduce your taxable estate dollar-for-dollar. Charitable Remainder Trusts (CRTs) provide income during life plus estate reduction.

Family Limited Partnership / LLC: Business owners can transfer interests to family members at discounted values, reducing estate size while keeping control.

Qualified Personal Residence Trust (QPRT): Transfer your home to heirs at a discounted value while retaining the right to live in it for a term of years.

Portability Election: A surviving spouse can 'port' the deceased spouse's unused federal exemption — but **MUST** file an estate tax return to elect this, even if no tax is owed.

■ ■ New York State Estate Tax — Special Considerations

New York has its own estate tax separate from (and in addition to) federal estate tax. Even families with estates well below the federal exemption may owe New York estate tax. This makes specialized state estate tax planning particularly important for New York residents.

Chapter 4: Will vs. Trust — What's Right for New York?

The will vs. trust decision is one of the most common questions in estate planning. Here's what New York residents specifically should consider:

Feature	Last Will & Testament	Revocable Living Trust
Cost to Create	\$69–\$299 (online) or \$1,500+ (attorney)	\$399–\$599 (online) or \$2,000+ (attorney)
Probate Required	Yes — goes through Surrogate's Court	No — trust assets bypass probate
Privacy	Becomes public record in probate	Remains private
Effective When	Only at death	During life AND at death
Incapacity Planning	Requires separate POA	Successor trustee takes over automatically
Complexity	Simpler to create	More complex — must fund the trust
Out-of-State Property	Requires ancillary probate	Avoids ancillary probate
Minor Beneficiaries	Court may require guardianship of assets	Trust manages assets until set age
Contests	Relatively easy to challenge	Harder to contest than a will
Business Assets	Can name executor to manage	Trust can hold business interests
Updates	Execute new will or codicil	Simple amendment (amendment form)
Time to Settle	6–18 months (probate)	Weeks to months (no court)

When a Will is Usually Sufficient in New York

- ✓ Your total estate is well below the probate threshold
- ✓ You don't own real estate in multiple states
- ✓ Your beneficiaries are adults with no special needs
- ✓ Privacy isn't a concern
- ✓ You're young and building wealth — plan to upgrade later
- ✓ Your beneficiaries are named on all accounts/insurance policies

When a Trust is Strongly Recommended in New York

- ✓ Your estate exceeds the \$50,000 probate threshold
- ✓ You own real estate in multiple states
- ✓ You want to avoid the time and cost of probate
- ✓ You have a beneficiary with special needs or addiction issues
- ✓ You want privacy — probate records are public in New York
- ✓ You're concerned about incapacity planning

- ✓ You have minor children and want control over when/how they inherit
- ✓ Your estate may exceed the state estate tax exemption — trust structures can help

Popular Trust Types in New York

- Revocable Living Trust
- Irrevocable Life Insurance Trust (ILIT)
- Credit Shelter Trust
- Supplemental Needs Trust
- Charitable Lead Trust

Chapter 5: Step-by-Step Will Creation in New York

Creating a legally valid will in New York requires following specific procedures. Here's a complete step-by-step guide:

Step 1: Gather Your Information

- List all assets: real estate, bank accounts, investments, retirement accounts, vehicles, valuable personal property
- List all liabilities: mortgage, debts, loans
- Identify all potential beneficiaries (name, address, relationship, date of birth)
- Choose an executor — the person who will carry out your will's instructions
- If you have minor children: choose a guardian
- Consider alternates for each role in case your first choice is unavailable

Step 2: Decide How to Distribute Your Assets

- Specific bequests: 'I give my car to [name]' or 'I give \$10,000 to [charity]'
- Residuary estate: everything not otherwise given — pick one or more beneficiaries and percentages
- Contingent gifts: what happens if a beneficiary dies before you do?
- For minors: at what age should they receive assets directly? (Many people choose 21, 25, or 30)
- Review beneficiary designations — retirement accounts and insurance pass OUTSIDE the will

Step 3: Choose Your Estate Planning Method

- Online service (fastest, least expensive) — Trust & Will, LegalZoom, or similar (see Chapter 11)
- Attorney-drafted (most thorough, most expensive) — see Chapter 10 for New York attorney costs
- Self-drafted (risky, not recommended without legal training)
- State-provided statutory will form (limited but better than nothing)

Step 4: Execute the Will Properly

- New York requires: your signature + 2 witnesses
- Witnesses must be adults who are NOT beneficiaries in the will
- Everyone must sign at the same time, in each other's presence
- Notarization: Not required for validity, but strongly recommended for the self-proving affidavit
- Self-proving affidavit: Highly recommended — signed before a notary, makes probate smoother
- Do NOT use correction fluid or make changes to a signed will — execute a new will or codicil

Step 5: Store Your Will Safely

- Keep the original in a fireproof safe or safety deposit box
- Tell your executor where to find it

- Do NOT store it somewhere inaccessible (a safety deposit box that only you can open)
- Register it with your county probate court (optional in most states, but adds protection)
- Keep a copy with your attorney if you used one
- Review and update every 3–5 years or after major life events

Step 6: Update When Circumstances Change

- Marriage or divorce
- Birth of a child or grandchild
- Death of a beneficiary or executor
- Major change in assets (bought/sold real estate, inherited money, started a business)
- Moving to a new state (especially community property vs. non-community property)
- Significant change in tax laws

Chapter 6: Setting Up a Trust in New York

A revocable living trust is the most common type of trust used in estate planning. Here's how to create and properly fund one in New York:

Phase 1: Create the Trust Document

- Choose your trustee: you are typically the initial trustee of your own revocable trust
- Choose a successor trustee: who takes over if you become incapacitated or die?
- Choose beneficiaries: who receives trust assets after your death?
- Define distribution terms: ages, conditions, outright distribution or ongoing trust?
- Work with an attorney or online service to draft the trust document
- Execute the trust: typically requires your signature (and sometimes notarization)

Phase 2: Fund the Trust (Critical Step Most People Skip!)

Warning: An unfunded trust is essentially worthless for probate avoidance. The most common trust mistake is creating the document but failing to transfer assets into it.

Real Estate: Execute and record a new deed transferring property to 'The [Your Name] Revocable Trust dated [Date].' In New York, this must be done through the Surrogate's Court county recorder.

Bank Accounts: Contact your bank to retitle accounts in the trust name, or add the trust as a POD beneficiary.

Brokerage / Investment Accounts: Contact your broker to retitle non-retirement accounts in the trust name.

Retirement Accounts (IRA/401k): Do NOT transfer these into the trust — keep beneficiary designations current. Consider naming the trust as contingent beneficiary only if appropriate.

Life Insurance: Consider naming the trust (or keeping individual beneficiaries). For estate tax purposes, an ILIT may be better.

Vehicles: Retitling vehicles into the trust has drawbacks (insurance complications). Consider a TOD designation or simply not transferring.

Business Interests: Transfer LLC membership interests or corporate shares to the trust per your operating agreement.

Personal Property: A 'schedule of assets' or 'assignment of personal property' document can transfer personal items into the trust.

Phase 3: Create Companion Documents

- Pour-Over Will: catches any assets not in the trust at death, 'pours them over' into the trust
- Durable Power of Attorney: for financial decisions outside the trust
- Healthcare directive: Health Care Proxy + Living Will
- HIPAA Authorization: authorizes healthcare providers to share information
- Beneficiary designation updates: update all accounts to align with trust plan

Phase 4: Ongoing Maintenance

- Review the trust every 3–5 years
- Add new assets to the trust as you acquire them
- Update the trust when beneficiaries' circumstances change
- Ensure new real estate is titled in the trust name at purchase
- Provide copies (or at least the trustee's name/contact info) to your financial institutions

Chapter 7: Trust Setup Checklist

Use this checklist to track your progress in setting up and maintaining your trust in New York:

■ Trust Document

- Choose trustee, successor trustee, and beneficiaries
- Draft trust document (attorney or online service)
- Execute trust document with required signatures
- Store original trust document securely
- Provide copies to financial institutions

■ Real Estate

- Prepare deed transferring property to trust
- Deed recorded with county recorder
- Notify homeowner's insurance (add trust as additional insured)
- Notify mortgage lender (due-on-sale clause considerations)
- Verify property taxes still correctly assessed

■ Financial Accounts

- Primary checking/savings: retitled to trust
- Savings/money market: retitled to trust
- Brokerage accounts: retitled to trust
- CDs/bonds: retitled to trust
- Safe deposit box: access updated

■ Retirement Accounts

- IRA beneficiary designation reviewed
- 401(k) beneficiary designation reviewed
- SEP-IRA / SIMPLE IRA beneficiary reviewed
- Annuity beneficiaries reviewed

■ Insurance & Protection

- Life insurance beneficiary reviewed
- Homeowner's/renters insurance: trust added
- Umbrella policy reviewed

■ Companion Documents

- Pour-over will executed
- Durable power of attorney executed
- Health Care Proxy + Living Will executed
- HIPAA authorization signed

■ Ongoing Maintenance

- Annual review scheduled (every 3–5 years minimum)
- New assets added to trust as acquired
- Beneficiary designations reviewed after life events
- Trust amendments made when needed

Chapter 8: Common Mistakes New York Residents Make

These are the most common — and costly — estate planning mistakes specific to New York residents. Learning from others' errors can save your family thousands of dollars and months of heartache.

■ ■ Mistake #1 Underestimating New York estate tax — the 'cliff' can create a major tax trap for estates just over the exemption

■ ■ Mistake #2 Not naming a guardian for minor children in your will — NY courts need this guidance

■ ■ Mistake #3 Using only beneficiary designations without a will — creates complexity when beneficiaries predecease you

■ ■ Mistake #4 Failing to update wills after divorce (NY law revokes gifts to ex-spouse but not all provisions)

■ ■ Mistake #5 Ignoring NYC co-op apartment transfer restrictions — many co-ops require board approval even for estate transfers

■ ■ Mistake #6 Not having a Health Care Proxy separate from a Living Will — NY recommends both

Universal Estate Planning Mistakes

- Procrastinating — many people die without any estate plan at all
- DIY errors — using forms that don't comply with your state's specific requirements
- Forgetting to update — your 1998 will names your ex-spouse as executor
- Not coordinating beneficiary designations with your will/trust plan
- Leaving minor children without a named guardian
- Not having a healthcare directive — leaving your family to guess at your wishes
- Assuming your spouse automatically gets everything (not true in many states without proper planning)
- Not protecting assets from long-term care / Medicaid spend-down
- Failing to plan for digital assets (social media, cryptocurrency, online accounts)

Chapter 9: New York Forms & Requirements

Here are the key forms and requirements for estate planning in New York:

Will Execution Requirements

Requirement	Detail
Document Type	Typed/printed (electronic wills have limited validity)
Your Signature	Required — sign in front of witnesses
Number of Witnesses	2
Witness Requirements	Adults, not beneficiaries in the will
Notarization	Not required for validity
Self-Proving Affidavit	Available (notarized — streamlines probate)
Date Required	Yes — date your will when you sign it

Key New York Estate Planning Forms

Form Name/Number	Purpose	Where to Get
SCPA §1402	Petition for Probate	https://www.nycourts.gov/court...
NY DOH-5010	Health Care Proxy	https://www.nycourts.gov/court...
POA-Statutory	Statutory Short Form Power of Attorney	https://www.nycourts.gov/court...
DE-111 equivalent	Letters Testamentary Application	https://www.nycourts.gov/court...

Healthcare Directive Requirements in New York

New York's advance healthcare directive is called the "Health Care Proxy + Living Will". This document (or these documents) allow you to: (1) state your wishes about end-of-life medical treatment, and (2) name someone to make healthcare decisions for you if you cannot. It is separate from your will and equally important.

Power of Attorney Requirements

A Durable Power of Attorney (POA) is critical for incapacity planning in New York. This document names someone to manage your financial affairs if you become unable to do so yourself. Without it, your family may need court-supervised conservatorship/guardianship — an expensive and time-consuming process. Requirements vary by state — use a New York-specific POA form.

Chapter 10: Attorney Costs in New York

New York City attorneys typically charge \$3,000–\$10,000+ for comprehensive estate planning. Upstate attorneys often charge \$1,500–\$4,000. Complex NYC estates with real estate and business interests regularly run \$10,000–\$25,000+.

Attorney Fee Structures

Fee Type	How It Works	Best For
Flat Fee	Fixed price for a defined package (will, trust, POA, etc.)	Most individuals and families
Hourly	Billed per hour (\$200–\$500+/hr for estate attorneys)	Complex, custom situations
Percentage	% of estate value — common in probate (not planning)	Estate administration
Subscription	Annual fee for ongoing access and updates	People who want maintenance

Typical New York Attorney Package Costs (2026)

Package	Typical Cost	What's Included
Simple Will Package	\$2,000–\$7,000	Will + POA + Healthcare Directive
Revocable Trust Package	\$2,500–\$7,000	Trust + Pour-Over Will + POA + Directive
Couples Estate Plan	\$5,000+	Two complete plans coordinated
Business Owner Plan	Call for quote	Above + business succession planning
Probate Administration	\$10,000–\$30,000+	Full estate administration (not planning)

Attorney vs. Online Service: The Real Comparison

For most families in New York, the decision comes down to complexity. Here's our honest take:

Online services are great when:

- Your situation is relatively straightforward
- You're comfortable with forms and guidance
- Budget is a consideration
- You want to get it done quickly

An attorney is worth it when:

- Your estate may be subject to state or federal estate tax
- You have a blended family, special needs beneficiaries, or complex relationships
- You own a business that needs succession planning
- You own property in multiple states

- You've had a significant change in life circumstances
- You want personalized advice, not just document generation

■ Pro tip: Many people start with an online service for a basic plan and then upgrade to an attorney as their estate grows. Even an online will is vastly better than no will at all.

Chapter 11: Online Estate Planning Tools — Full Comparison

Online estate planning services have made professional-quality estate documents accessible to everyone. All major services cover all 50 states including New York. Here's our comprehensive comparison for 2026:

Service	Will	Estate Plan	Trust	Best For	Rating
Trust & Will	\$69	\$199	\$399	Affordable, focused estate planning	4.8/5
LegalZoom	\$89	\$249	\$549+	Established brand, broader legal services	4.5/5
Fabric by Gerber Life	Free	Free	N/A	Young families on a budget	4.4/5
Willing	\$69	\$149	\$249	Simple estates, easy interface	4.2/5
Nolo WillMaker	\$99	\$199	\$249	Desktop software, comprehensive guidance	4.1/5

Service Deep Dives

■ Trust & Will

Website: <https://law-trust.com/go/trust-and-will>

Pricing: Wills from \$69 • Estate plans from \$199 • Trusts from \$399

Best for: Affordable, focused estate planning

Our take: Our top pick for most users. Attorney-reviewed in all 50 states. Fastest to complete.

■ LegalZoom

Website: <https://law-trust.com/go/legalzoom>

Pricing: Wills from \$89 • Estate plans from \$249 • Trusts from \$549+

Best for: Established brand, broader legal services

Our take: 25+ years of trust. Better if you also need business or trademark services.

■ Fabric by Gerber Life

Website: <https://law-trust.com/go/fabric>

Pricing: Wills from Free • Estate plans from Free • Trusts from N/A

Best for: Young families on a budget

Our take: Free basic will creation. Focused on young parents and life insurance.

■ Willing

Website: <https://law-trust.com/go/willing>

Pricing: Wills from \$69 • Estate plans from \$149 • Trusts from \$249

Best for: Simple estates, easy interface

Our take: Clean interface. Good for straightforward estates.

■ Nolo WillMaker

Website: <https://law-trust.com/go/nolo>

Pricing: Wills from \$99 • Estate plans from \$199 • Trusts from \$249

Best for: Desktop software, comprehensive guidance

Our take: Desktop software with extensive legal guidance. Good for DIY-minded users.

■ Our Recommendation: Trust & Will is our top pick for most New York residents. It offers the best combination of price, quality, attorney review, and ease of use. Visit law-trust.com for our full reviews and current discount links.

Chapter 12: Frequently Asked Questions — New York

Here are the most common questions from New York residents about wills, trusts, and estate planning:

Q: Does New York have a state estate tax?

A: Yes. In 2026, NY estates over approximately \$7.16 million are subject to state estate tax. The 'cliff' provision means estates slightly over the threshold pay tax on the entire estate, not just the excess.

Q: What is probate called in New York?

A: New York probate is handled by the Surrogate's Court in each county. The process is called 'probating' a will, and the court issues 'Letters Testamentary' to the executor.

Q: What is the small estate threshold in New York?

A: Estates with gross assets under \$50,000 (excluding real estate) can use a simplified 'voluntary administration' procedure, avoiding full probate.

Q: Do I need a living trust in New York?

A: It depends. Trusts are valuable for larger estates (near or over the estate tax threshold), for privacy (probate is public), or to avoid probate delays. For smaller estates, a simple will with beneficiary designations may suffice.

Q: What is a Health Care Proxy in New York?

A: A Health Care Proxy designates someone to make medical decisions for you if you cannot. NY recommends having both a Health Care Proxy (who decides) and a Living Will (your written wishes). The DOH-5010 form is standard.

Q: How long does probate take in New York?

A: Typically 6–12 months for uncontested estates. Complex estates or those with disputes can take 2+ years. New York City courts often have longer backlogs than upstate courts.

Q: Can I handwrite my own will in New York?

A: Yes, holographic (entirely handwritten and signed) wills are valid in New York under limited circumstances, primarily for military personnel. For civilians, typed wills with two witnesses are strongly recommended.

Q: What happens to my co-op apartment when I die?

A: Co-op shares pass through your estate like personal property, but many co-ops require board approval for transfers. Review your proprietary lease carefully and consult an attorney familiar with NYC co-ops.

Chapter 13: New York Resources & Official Links

Official New York Resources

Resource	URL / Contact
Surrogate's Court (Probate)	https://www.nycourts.gov/courts/surrogates/
New York State Bar (Attorney Referral)	https://nysba.org/
Federal Estate Tax (IRS)	https://www.irs.gov/businesses/small-businesses-self-employed/estate-tax
Free Legal Aid (New York)	https://www.lawhelp.org/ny/
AARP Legal Counsel for Elderly	https://www.aarp.org/legal-counsel/
law-trust.com Full Reviews	https://law-trust.com/
law-trust.com All State Guides	https://law-trust.com/guides/

Online Learning Resources

- **American Bar Association (Estate Planning):** https://www.americanbar.org/groups/real_property_trust_estate/
- **ACTEC (estate planning specialists):** <https://www.actec.org/>
- **IRS Estate & Gift Tax:** <https://www.irs.gov/businesses/small-businesses-self-employed/estate-tax>
- **NOLO Estate Planning Resources:** <https://www.nolo.com/legal-encyclopedia/wills-trusts-estates>
- **Consumer Financial Protection Bureau:** <https://www.consumerfinance.gov/>

Finding an Estate Planning Attorney in New York

The New York State Bar Association (<https://nysba.org/>) offers a lawyer referral service. When searching for an estate planning attorney, look for: (1) Board certification or specialization in estate planning, (2) Membership in ACTEC (American College of Trust and Estate Counsel), (3) Experience with estates similar in size and complexity to yours, (4) Clear fee structure disclosed upfront, (5) Good communication — you should feel comfortable asking questions.

Chapter 15: Digital Assets & Your Estate Plan

Digital assets are a modern estate planning challenge that most people overlook. From cryptocurrency to social media accounts, your digital footprint has real value — and without proper planning, your heirs may lose access to it entirely.

What Are Digital Assets?

Financial Digital Assets

- Cryptocurrency (Bitcoin, Ethereum, NFTs) — can be worth substantial amounts
- Online brokerage accounts (Robinhood, Fidelity, Schwab online)
- PayPal, Venmo, Cash App balances
- Online savings accounts (Marcus, Ally, SoFi)
- Reward points, airline miles, hotel points (often worth thousands)

Business Digital Assets

- Domain names and websites
- Online businesses (Etsy shops, Amazon seller accounts, dropshipping stores)
- Intellectual property stored digitally (ebooks, courses, software)
- Social media accounts with monetization (YouTube, Instagram, TikTok)
- Client lists and business data

Personal Digital Assets

- Social media accounts (Facebook, Instagram, Twitter/X, LinkedIn)
- Email accounts (Gmail, Outlook)
- Cloud storage (Google Drive, Dropbox, iCloud — photos, documents)
- Streaming subscriptions and digital libraries (iTunes, Kindle, Netflix)
- Gaming accounts with in-game currency or collectibles
- Password manager accounts

Legal Framework in New York

Most states, including New York, have adopted some version of the Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA). This law gives fiduciaries (executors, trustees, and agents) the legal authority to access digital assets — but only if you give them permission through your estate planning documents.

The Three-Tier Priority System

Tier 1: Online Tool: If a platform offers an online tool to designate who can access your account after death (like Facebook's Legacy Contact or Google's Inactive Account Manager), that setting controls — it overrides your will.

Tier 2: Terms of Service: If there's no online tool, the platform's Terms of Service governs. Many prohibit account transfers entirely.

Tier 3: Will or Trust: If neither of the above applies, your will or trust can authorize access — but only to the extent allowed by the platform's ToS.

Digital Asset Planning Checklist

- Create a digital asset inventory (account names, rough values, access instructions)
- Store it securely — NOT in your will (which becomes public in probate)
- Use a password manager and document how your executor can access it
- Set up legacy contacts for Facebook, Google, Apple ID
- Add specific digital asset language to your durable power of attorney
- Add specific digital asset provisions to your trust if you have significant digital assets
- For cryptocurrency: document your wallet addresses and seed phrases in a secure location
- Consider a separate 'Digital Asset Letter of Instruction' sealed with your will
- Review platform Terms of Service for accounts with significant value

Cryptocurrency Estate Planning

Cryptocurrency poses unique estate planning challenges. Unlike a bank account, there is NO customer service to call if you lose access. If your heirs don't have your private keys or seed phrase, the cryptocurrency is gone forever. At the same time, if you store access information insecurely, you risk theft during your lifetime.

- Never store seed phrases/private keys in your will (it becomes a public document)
- Use a hardware wallet and document how to use it
- Consider a fireproof safe with a sealed envelope containing access instructions
- Tell your executor that crypto exists without revealing the access details in public documents
- Consider a crypto-specific trust or 'digital asset letter' held by your attorney
- Keep records of your cost basis for tax purposes — your heirs will need this

Chapter 16: Special Circumstances & Advanced Planning

Certain life situations require specialized estate planning strategies beyond the basics. Here's how New York residents in these situations should approach their planning:

■ Blended Families (Second Marriages, Stepchildren)

Blended families are one of the most common sources of estate disputes. The challenge: you want to provide for your current spouse, while also ensuring your children from a prior relationship ultimately inherit.

QTIP Trust (Qualified Terminable Interest Property): Provides income to surviving spouse for life, then passes principal to your children. Used when you trust your spouse's financial needs but want to protect children's inheritance.

His/Hers/Ours Separate Trusts: Each spouse maintains separate trusts for their own children, with a shared trust for joint assets and joint children.

Prenuptial Agreement Coordination: Estate plan should be coordinated with any prenuptial agreements to avoid conflicts.

Annual Review: Blended family dynamics change — plan should be reviewed more frequently, especially after children come of age or family relationships change.

■ Business Owners

If you own a business, your estate plan must address business succession — what happens to your business when you die or become incapacitated. Without planning, a business can fail within months of an owner's death.

- **Buy-Sell Agreement:** legally binding agreement between business co-owners — what happens if an owner dies, becomes disabled, divorces, or wants to sell
- **Funded Buy-Sell:** the buy-sell agreement is funded with life insurance so the surviving owners can afford to buy out the deceased owner's interest
- **Succession Planning:** identify who will run the business — a family member, key employee, or sale to a third party
- **Business Valuation:** get the business valued for estate and gift tax planning purposes
- **Operating Agreement/Shareholder Agreement:** ensure these documents address death/disability scenarios
- **Key Man Insurance:** insures the business against the loss of key personnel
- **Family Limited Partnership/LLC:** can transfer business interests to heirs at discounted values, reducing estate taxes

■ Special Needs Beneficiaries

If you have a child or other family member with special needs who receives (or may receive) government benefits like Medicaid or SSI, leaving them an outright inheritance can disqualify them from those benefits. A Special Needs Trust (SNT) is the solution.

- A properly drafted SNT allows you to leave assets for a person with disabilities without disqualifying them from needs-based government benefits

- The trust pays for 'supplemental' needs beyond what government programs provide — vacations, electronics, personal care items, education
- Third-party SNTs (funded by anyone other than the beneficiary) have no Medicaid payback requirement
- First-party SNTs (funded with the beneficiary's own assets, such as a personal injury settlement) DO have a Medicaid payback requirement
- An SNT should be drafted by an attorney experienced in disability law in New York
- ABLE accounts (Achieving a Better Life Experience) are a simpler alternative for smaller amounts

■ Long-Term Care & Medicaid Planning

The average cost of a nursing home in the US is \$7,000–\$10,000+ per month. Without planning, a long-term illness can wipe out a lifetime of savings. Medicaid planning — legally restructuring your assets to qualify for Medicaid — is a legitimate and important estate planning strategy.

5-Year Lookback: Medicaid has a 5-year lookback period for asset transfers. Give-aways made within 5 years of applying for Medicaid can result in a penalty period.

Medicaid Asset Protection Trust (MAPT): An irrevocable trust that holds assets outside your estate for Medicaid purposes — after the 5-year waiting period.

Spousal Protections: Medicaid 'spousal impoverishment' rules protect the community spouse (the one at home) by allowing them to keep certain assets and income.

Long-Term Care Insurance: Purchasing LTC insurance is the cleanest solution — pay a premium to insure against this risk. Best purchased before health issues arise.

Hybrid Policies: Life insurance with LTC riders provide coverage for both death and long-term care needs.

■ Non-Citizen Spouses

The unlimited marital deduction does NOT apply to non-citizen spouses. This can create a significant estate tax problem. A Qualified Domestic Trust (QDOT) is the solution — it allows assets to pass to a non-citizen surviving spouse estate tax-free, as long as the trust meets specific IRS requirements.

Chapter 17: New York Probate Timeline & Process

If your estate does go through probate in New York, here's a detailed timeline of what to expect:

Week 1–2

Immediate Actions

- Obtain 10–15 certified copies of the death certificate (you'll need more than you think)
- Locate the original will and safe deposit box key
- Notify immediate family and close friends
- Secure all assets and property — change locks if needed
- Stop automatic bill payments for discretionary expenses
- Notify Social Security, pension providers, and VA (if applicable) of the death
- Keep all medical and funeral bills for estate reimbursement

Month 1

File Probate

- File petition with the Surrogate's Court in the county of residence
- Submit original will to the court
- Pay probate filing fee (varies by county)
- Court issues Letters Testamentary (or Letters of Administration if no will)
- Executor is officially authorized to act
- Open an estate bank account

Month 1–3

Notice & Inventory

- Publish notice to creditors (required in most states — typically 3–4 weeks in a local newspaper)
- Notify known creditors directly by mail
- Create inventory of all probate assets
- Obtain date-of-death valuations for all assets
- File inventory with the court
- Contact employer for final paycheck and benefits
- Collect all income owed to the estate

Month 3–9

Administration

- Creditors have time to file claims (usually 3–6 months depending on state)
- Pay valid creditor claims (in priority order per state law)
- File final income tax return for the deceased (due April 15 or 9 months after death)
- File estate income tax return if estate earns income
- File estate tax return if applicable (due 9 months after death)
- Manage estate assets (maintain real estate, investments)

- Potentially sell real estate if required to pay debts or per will instructions

Month 6–18**Distribution & Closing**

- Obtain court approval for accountings (if required)
- Distribute assets to beneficiaries per will instructions
- Obtain receipts from all beneficiaries
- Pay executor compensation (typically 2–4% of estate value, per state guidelines)
- File final accounting with the court
- Petition for formal discharge of executor
- Court closes the estate

Executor Duties & Responsibilities

Being named executor is an honor — and a significant responsibility. Here's what executors in New York are legally required to do:

- Act as a fiduciary — always in the best interests of the estate and beneficiaries
- Keep estate assets separate from personal assets
- Keep accurate records of all income, expenses, and transactions
- Treat all beneficiaries fairly and equally (no favorites)
- Communicate regularly with beneficiaries about estate progress
- Make prudent investment decisions for estate assets during administration
- File all required tax returns
- Pay all valid debts before distributing to beneficiaries
- Personal liability for mismanagement — executors can be sued for mistakes

Chapter 18: Asset Protection Strategies

Asset protection planning — legally restructuring your assets to protect them from future creditors, lawsuits, and judgments — is an important complement to estate planning. Here are the most important strategies available in New York:

Homestead Exemption

New York offers homestead protection for your primary residence. The amount varies by state — some offer unlimited protection (Florida, Texas), while others cap it. Check the current limit with an attorney.

Retirement Accounts

IRAs and 401(k)s have strong federal and state creditor protection. Funding your retirement accounts is both good financial planning and asset protection.

Life Insurance & Annuities

Many states (including some protection in New York) protect the cash value of life insurance and annuities from creditors. Check New York-specific rules.

LLC / Corporation

Operating a business through an LLC or corporation separates business liabilities from personal assets. Proper formation and maintenance is critical.

Irrevocable Trust

Assets transferred to an irrevocable trust are generally no longer yours — and therefore protected from your future creditors. However, transfers must be made before creditor claims arise.

Domestic Asset Protection Trust (DAPT)

Some states allow self-settled asset protection trusts where you can be both the grantor and beneficiary while receiving creditor protection. Check if New York allows DAPTs.

Tenancy by the Entirety

In states that allow it, property held as tenancy by the entirety by a married couple is protected from the creditors of just one spouse. Check if available in New York.

Gifting

Transferring assets to family members reduces your estate — but must be done well before any claims arise. Fraudulent conveyance laws can unwind gifts made to avoid known creditors.

Asset Protection for Professionals

Doctors, attorneys, architects, engineers, and other licensed professionals face unique liability risks. Professional malpractice judgments can exceed insurance coverage. Comprehensive asset protection planning is especially important for these individuals.

- Maintain adequate malpractice insurance as the first line of defense
- Practice through a Professional Corporation (PC) or Professional LLC (PLLC) — limits personal liability for partner/colleague acts
- Keep retirement accounts fully funded — they have strong protection

- Consider umbrella insurance for personal assets
- Segregate high-value assets (real estate, investment accounts) from business operations
- Review your state's professional liability rules with a malpractice attorney
- Consider a domestic asset protection trust if your state allows them

■ ■ What Asset Protection Cannot Do

It's important to understand the limits of asset protection planning:

- Cannot protect against claims that existed BEFORE the protection was put in place (fraudulent conveyance)
- Cannot protect against all types of claims — child support, alimony, criminal fines, some tax claims
- Requires proper planning and maintenance — incomplete or sloppy planning can be undone by courts
- Is not a substitute for adequate insurance
- Cannot be done in the middle of a lawsuit — must be done proactively

Chapter 20: Real-World Planning Scenarios for New York Residents

These hypothetical scenarios illustrate how estate planning works for different types of New York families. All names are fictional.

Scenario 1: Young Family in New York

Profile: Mike & Sarah, ages 32 and 30. Two kids, ages 3 and 5. Combined income: \$120,000/year. Own a home with \$150,000 equity. \$50,000 in 401(k)s. \$200,000 in term life insurance each.

Key Concerns:

- Guardianship for minor children
- Managing life insurance proceeds until children are adults
- Affordable planning solution

Recommended Plan:

- Simple wills naming each other as primary beneficiary and their parents as guardians for children
- Testamentary trust in the will to hold life insurance proceeds until children reach age 25
- Durable power of attorney for each spouse
- Health Care Proxy + Living Will for each spouse
- Update 401(k) beneficiary designations to each other
- Consider term life insurance increase as family/assets grow
- Best tool: Online service (Trust & Will or LegalZoom) — estate is straightforward
- Total cost: \$150–\$400 through an online service

Scenario 2: Retiring Couple in New York

Profile: Jim & Betty, ages 65 and 63. Kids grown and on their own. Home valued at \$450,000 (paid off). IRAs: \$800,000 combined. Investment account: \$300,000. Social Security income.

Key Concerns:

- Avoiding probate
- Tax-efficient IRA distribution to heirs
- Incapacity planning
- State estate tax exposure

Recommended Plan:

- Revocable living trust to hold home and investment accounts — avoids probate
- Pour-over wills for each spouse
- IRA beneficiary designations: spouse as primary, children as contingent
- Consider an inherited IRA trust as contingent beneficiary (for tax-stretch planning)
- Durable powers of attorney
- Health Care Proxy + Living Will

- Credit shelter trust provisions to maximize the New York estate tax exemption
- Attorney recommended — estate is complex enough to warrant custom drafting
- Total cost: \$3,000–\$7,000 depending on attorney

Scenario 3: Small Business Owner in New York

Profile: Carlos, age 45. Single. Owns a plumbing business worth ~\$500,000. Has two employees. Home: \$350,000 with \$150,000 equity. Retirement: \$200,000. Two adult children from a prior marriage.

Key Concerns:

- Business succession
- Ensuring business doesn't collapse at death
- Fair treatment of both children
- Asset protection from business liability

Recommended Plan:

- Revocable living trust to hold personal assets
- Buy-sell agreement for the business (keyman life insurance funded)
- Business succession plan: name key employee as manager, give option to purchase
- Separate personal and business assets clearly in the trust
- LLC operating agreement updated to address death/disability
- Life insurance to equalize inheritance: if business goes to Child A, life insurance to Child B
- Durable POA with specific business management authority
- Business liability umbrella insurance
- Attorney essential — business succession requires custom planning
- Total cost: \$5,000–\$15,000 including business succession documents

Scenario 4: Individual with Special Needs Child in New York

Profile: Patricia, age 55. Widowed. Two children: one age 25 (neurotypical) and one age 20 with significant disabilities who receives SSI and Medicaid.

Key Concerns:

- Not disrupting disabled child's government benefits
- Providing meaningful support for disabled child beyond what government provides
- Fairness to both children

Recommended Plan:

- Third-party Special Needs Trust (SNT) for the child with disabilities
- Life insurance to fund the SNT
- Regular will and trust provisions for the neurotypical child
- Name a professional corporate trustee for the SNT (impartial, experienced with disability law)
- ABLE account for the disabled child for smaller, accessible funds

- Coordinate with siblings — educate them about SNT and why they shouldn't just give money directly to sibling with disabilities
- Attorney with disability law experience is essential for this planning
- Total cost: \$3,000–\$8,000 plus ongoing trustee fees

Chapter 19: Estate Planning Glossary

Estate planning has its own vocabulary. Here are the key terms you need to know:

Administrator	A person appointed by the court to manage the estate of someone who died without a will (intestate).
Advance Directive	A legal document stating your healthcare wishes if you cannot communicate. Includes living wills and healthcare powers of attorney.
Beneficiary	A person or organization who receives assets from a will, trust, or beneficiary designation.
Bequest	A gift of personal property made in a will. A devise is a gift of real property.
Bypass Trust	Also called a credit shelter trust. Holds assets to take advantage of each spouse's estate tax exemption.
Codicil	An amendment to an existing will. Must be executed with the same formalities as the original will.
Decedent	The person who has died.
Durable Power of Attorney	A legal document authorizing someone (your 'agent' or 'attorney-in-fact') to make financial decisions for you. 'Durable' means it remains effective even if you become incapacitated.
Elective Share	A surviving spouse's right to claim a percentage of the deceased spouse's estate regardless of will provisions.
Estate	Everything you own at the time of your death — assets, liabilities, and rights.
Estate Tax	A tax on the transfer of your estate at death. Separate from inheritance tax.
Executor / Personal Representative	The person named in your will to carry out your wishes and administer your estate.
Fiduciary	A person who has a legal duty to act in the best interests of another. Executors, trustees, and agents are all fiduciaries.
Funding a Trust	The process of transferring assets into a trust. An unfunded trust provides no probate avoidance.
Grantor	The person who creates and funds a trust. Also called settlor or trustor.
Guardian	A person appointed to care for a minor child or incapacitated adult.
Heirs	Persons who inherit under the law (intestate succession). Distinguished from beneficiaries who inherit under a will.
HIPAA Authorization	Authorizes healthcare providers to share your medical information with designated people.

Holographic Will	A will entirely in the handwriting of and signed by the testator. Valid in some states, not all.
Inheritance Tax	A tax paid by the person who RECEIVES an inheritance. Different from estate tax (which is paid by the estate). Pennsylvania still has this.
Intestate / Intestacy	Dying without a valid will. Assets pass by state intestacy laws.
Irrevocable Trust	A trust that generally cannot be changed or revoked once created. Offers estate tax and asset protection benefits.
Joint Tenancy with Right of Survivorship (JTWROS)	A form of co-ownership where the surviving owner automatically inherits the deceased owner's share.
Letters Testamentary	A court document authorizing an executor to act on behalf of the estate.
Living Trust	A trust created during your lifetime. Can be revocable or irrevocable.
Living Will	A document stating your wishes about medical treatment if you are terminally ill or incapacitated. Also called advance directive.
Marital Deduction	The federal (and sometimes state) estate tax deduction for assets passing to a surviving spouse.
Per Stirpes	A way of distributing assets: if a beneficiary dies before you, their share passes to their descendants.
Pour-Over Will	A will that 'pours' assets not in your trust into the trust at your death.
Probate	The court-supervised process of authenticating a will, paying debts, and distributing assets.
Revocable Living Trust	A trust you create and can change or revoke during your lifetime. Avoids probate at death.
Special Needs Trust	A trust that holds assets for a beneficiary with disabilities without disqualifying them from government benefits.
Successor Trustee	The person (or institution) who takes over management of a trust when the original trustee dies, resigns, or becomes incapacitated.
Tenancy by the Entirety	A form of co-ownership for married couples that provides creditor protection in states where available.
Testator	A person who creates a will.
Transfer-on-Death (TOD) / Payable-on-Death (POD)	A designation that allows assets to pass directly to named beneficiaries without probate.
Trustee	The person or institution responsible for managing trust assets according to the trust document.
Trustor / Settlor / Grantor	The person who creates and funds a trust (all mean the same thing).

Quick Reference: Key Numbers & Deadlines

2026 Key Estate Planning Numbers for New York Residents

Item	Amount / Detail
Federal Estate Tax Exemption (2026)	~\$13.61 million per person
Federal Annual Gift Exclusion	\$18,000 per recipient
Federal Lifetime Gift Exemption	~\$13.61 million (combined with estate exemption)
New York Probate Threshold	\$50,000
New York Estate Tax Exemption	~\$7M (IL), \$4M (IL)
Average Online Will Cost	\$69–\$299
Average Online Trust Cost	\$399–\$599
Average Attorney Will Package	\$2,000–\$7,000
Average Attorney Trust Package	\$2,500–\$7,000
Average Probate Cost	\$10,000–\$30,000+
Will Witnesses Required	2
Estate Tax Return Due	9 months after date of death
Estate Income Tax Return	April 15 (or 9 months after death for fiscal year)
FBAR (Foreign Accounts)	April 15 (if applicable)
Portability Election Deadline	9 months after death (file estate tax return)

Estate Planning Review Triggers

Review and potentially update your estate plan whenever any of these life events occur:

- Marriage or divorce
- Birth or adoption of a child or grandchild
- Death of a beneficiary, executor, trustee, or guardian
- Significant change in your financial situation (large inheritance, sale of business, major loss)
- Purchase or sale of significant real estate
- Starting or selling a business
- Moving to a new state

- Beneficiary develops special needs or substance abuse issues
- Children come of age (18, 21, 25 — depending on your plan)
- Significant changes in estate tax law
- Every 3–5 years even without a specific trigger

At-a-Glance: Online Services Comparison

Service	Will	Full Plan	Trust	URL
Trust & Will	\$69	\$199	\$399	law-trust.com/go/trust-and-will
LegalZoom	\$89	\$249	\$549+	law-trust.com/go/legalzoom
Fabric by Gerber Life	Free	Free	N/A	law-trust.com/go/fabric
Willing	\$69	\$149	\$249	law-trust.com/go/willing
Nolo WillMaker	\$99	\$199	\$249	law-trust.com/go/nolo

Chapter 14: Your Next Steps

You've just read everything you need to know about estate planning in New York. Now it's time to act. Here's your action plan:

This Week

- Decide: do you need a will, a trust, or both? (See Chapter 4 for guidance)
- Choose your path: online service or attorney
- If online: visit law-trust.com for our current recommendations and discount links
- If attorney: contact <https://nysba.org/> for referrals

Within 30 Days

- Create your will (minimum viable estate plan)
- Execute your healthcare directive (Health Care Proxy + Living Will)
- Execute your power of attorney
- Update beneficiary designations on all accounts

Within 90 Days

- If using a trust: fund it with your major assets
- Ensure real estate is properly titled
- Store all documents securely and tell your executor/successor trustee where they are
- Provide copies of healthcare directive to your doctor and family

Ongoing

- Review your plan every 3–5 years
- Update after major life events (marriage, divorce, new children, deaths, moves)
- Keep beneficiary designations current
- Add new assets to trust as acquired

■ **Ready to Get Started? Visit law-trust.com for:** • Our top-rated online estate planning service reviews • Current pricing and discount codes • State-specific guides and resources • Free will vs. trust quiz ■ law-trust.com

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