

Checklist for Preparing Will

1. Testator's full name and any other name by which he or she is commonly known.

2. Testator's date and place of birth.

3. Testator's citizenship and is there more than one citizenship. How citizenship was acquired? Testator's legal residence and other residences (time annually spent at each residence).

4. Name, age, and address of the spouse.

5. Is the testator divorced or separated.
Citizenship of the spouse and how citizenship was acquired.
Legal residence of the spouse (is the testator's spouse divorced)?
 - (a) Date and place of final divorce decree.
 - (b) Terms of marriage settlement.
 - (c) Was the testator plaintiff or defendant?
 - (d) If the testator is separated, is there a separation agreement and, if so, what are its terms?

6. Children: (Include, and so indicate, any adopted or nonmarital children, or children by a former marriage.)

7. Grandchildren:

8. Parents of the testator and the testator's spouse, if living:

9. Other relatives (brothers, sisters, uncles, aunts) when appropriate:

10. Testator's Assets and Liabilities (including domestic and foreign):

(a) Assets:

(b) Liabilities (include mortgages, notes, charitable pledges, etc.):

11. Other information with respect to the assets listed above:

(a) Bank accounts:

(1) Name, address, kind of account.

(2) Form of deposit and whether sole or joint account or Totten Trust.

(3) Names of persons having authority to make withdrawals from accounts.

(b) Stocks and bonds and any intangible assets:

(1) Location and form of ownership.

(2) Location of records of purchases and sales.

(3) Name and address of broker and form of brokerage account.

(4) Is the testator a custodian and/or donor of any gifts of stock, cash or insurance to a minor under the Uniform Transfers to Minors Act or the New York Uniform Gifts to Minors Act? ([EPTL §§ 7-6.1 to 7-6.23.](#))

(c) Life insurance:

(d) Insurance on the life of another owned by the testator:

(1) Who, besides the testator, has paid, or pays, the premiums on any of the life insurance described above?

(2) Are there loans against any of the policies?

(3) Name and address of insurance agent or broker.

(4) Do any of the testator's disability insurance policies have death benefits?

(5) Location of insurance policies.

(e) Interests in proprietorships, closely held corporations, and partnerships:

- Name of Business
- Nature of Business
- Testator's Position and nature of duties
- Net Worth and Annual Earnings
- Corporation, Partnership or Proprietorship

(6) Testator's proportionate interest and the interest of other persons interested in the enterprise:

(7) Is there any agreement for the acquisition of the interest of a partner or stockholder? If so, what are its terms?

(8) Is any insurance carried by the business on the testator's life?

(f) Employee benefits:

(1) What interests does the testator have in pension, stock purchase, stock option, deferred compensation, or profit-sharing plans (copies of the governing instruments or employer descriptions of the benefits or plans should be examined)?

(2) Are any death benefits payable by the employer to the surviving spouse or children?

(g) Real estate:

(1) Form of ownership (whether sole name, tenancy by the entireties, joint tenancy, tenancy in common).

(2) Location of deeds and brief description of real property.

(h) Tangible personal property:

(1) Are there any items of particular or sentimental value which the testator desires to bequeath specifically?

(2) Are the descriptions of such items sufficient for purposes of identification?

(3) Does the testator desire a gift over if the primary beneficiary does not survive the testator?

(i) Location of safe-deposit box and brief description of contents.

12. Is there an existing will or codicil? (If so, copies should be reviewed.) Is the existing will “grandfathered” from the federal generation-skipping tax?

13. Has the testator created any inter vivos trusts? (If so, copies of the agreements should be examined.) Are there powers of attorney?

(a) Are such trusts revocable or irrevocable?

(b) Are there any trusts created for the testator’s benefit; if so, does the testator have a general or special power of appointment over the principal of such trust; who are the remaindermen of the trust?

(c) Are such trusts grandfathered from the federal generation-skipping tax? If not, how much of the testator’s lifetime GST exemption for gifts to grandchildren or more remote issue remains available for allocation?

14. Does the testator have any general or special powers of appointment?

15. What inter vivos gifts, if any, has the testator made? (Obtain date, amount, and name of donee.)

16. Does the testator have any expectancies of inheritance from others?

17. Has the testator’s spouse executed a will? What are the approximate value and nature of the assets and expectancies of the testator’s spouse?

18. Provisions of proposed will (see § 7:2):

(a) Disposal of remains:

(1) What wishes concerning continuation on life support system if become incapacitated or comatose (to be covered by living wills and health care proxies)?

(2) Cremation or interment?

(3) Is there a cemetery plot?

(4) What provisions are desired for masses, funeral services, perpetual care of grave, or use of remaining graves in cemetery plot?

(5) Are anatomical gifts of organs contemplated?

(6) Appointment of Agent to Dispose of Remains?

(b) Provision for benefit of the spouse:

(1) Marital deduction—outright or in trust; pecuniary or fractional formula bequest; if in trust, power of invasion of principal (unlimited or limited amount) or power of trustees to pay the spouse principal (mandatory or discretionary, limited or unlimited amount); general power of appointment of the spouse over principal or to estate of the spouse on

his or her death; qualified terminable interest trust?

(2) Residuary trust for benefit of the spouse?

(3) Effect of right of election (see EPTL §§ 5-1.1(A) et seq.). Are there joint bank accounts with the spouse, Totten trusts for benefit of the spouse established by the testator, jointly held property with the spouse, property held by tenancy by the entireties? What inter vivos trusts has the testator created for the spouse? What inter vivos transfers to the spouse have been made or to others?

(4) Waiver of right of election.

(5) Antenuptial agreement.

(c) Bequests and devises: (Are legacies to be general, demonstrative, or specific? Is there to be a gift over if beneficiary (EPTL § 3-3.4) does not survive the testator? For charitable gifts, consider whether donee is capable of receiving gift; deductibility of gift for federal and state gift and estate tax purposes (26 U.S.C.A. § 2055; NYTL § 249-c(3)); obtain correct name from charity.)

- Cash:
- Jewelry (describe):
- Other items of particular value (describe):
- Personal effects (describe):
- Household effects (describe):
- Real estate (describe):
- Powers of appointment to be exercised (describe):

(d) Specific provisions with respect to children? Adopted, after-born, stepchildren, or out of wedlock children?

(e) Residuary estate:

(1) Outright.

(2) In trust:

(A) Name, address, and relationship of income beneficiaries.

(B) Name, address, and relationship of remaindermen.

(C) Invasion of principal by income beneficiary, power to pay out principal by trustees, corpus to be paid to income beneficiary on attainment of specified age, other special provisions regarding trust.

(D) Powers of trustees (broad or limited with respect to investment and management; are there special provisions with respect to some investments).

(E) Gift over in event income beneficiary predeceases the testator or dies before reaching certain age.

(f) Other special considerations:

(1) Advancements to be adjusted (see EPTL § 2-1.5).

(2) Simultaneous deaths or common accident or disaster (see EPTL § 2-1.6).

(3) Payment of estate taxes—to be apportioned or paid as administration expense or out of residuary estate (see EPTL § 2-1.8). Are taxes on property passing outside of will to be paid by testamentary estate?

(4) Forgiveness of debts.

(g) Appointment of executors and trustees:

- (1) Nonresidents or aliens (see [SCPA § 707](#)).
- (2) To serve without bond.
- (3) Provision for successor executor or trustee upon failure of primary executor or trustee to qualify or act.
- (4) Does the testator desire corporate executor or trustee?

(h) Appointment of guardian for minor children:

- (1) To serve without bond.
- (2) To act for both property and person of minor?
- (3) Relationship of person to be named.

(i) Special clauses:

- (1) Apportionment of principal and income, e.g., stock dividends, stock splits, and dividends from wasting assets ([EPTL § 11-2.1](#)).
- (2) Power to manage property of a minor during minority.
- (3) Other powers of fiduciaries (see [EPTL § 11-1.1](#)).
- (4) Law to govern will and payment of commissions of fiduciaries.
- (5) No-contest clause.

(j) Do the testator and the spouse have durable powers of attorney? If not, such powers should be executed when the will is signed.

Data Prepared by

Will Prepared by

Date of Execution

Name	Address	Age	Estimated Net Worth	Annual Income	Spouse's Name
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

Name	Address	Age	Estimated Net Worth	Parents' Names and Spouse's Name
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

Name	Address	Age	Estimated Net Worth	Annual Income
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

Name	Address	Age	Relationship	Occupation
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

- (1) Bank accounts \$ _____
 - (2) Publicly held stocks and bonds _____
 - (3) Closely held stock interests _____
 - (4) Life insurance _____
 - (5) Interests in proprietorships, partnerships and other closely held business interests _____
 - (6) Employee benefits _____
 - (7) Real estate _____
 - (8) Tax shelters _____
 - (9) Claims against others such as notes, mortgages, debts, and lawsuits _____
 - (10) Patents, mineral rights, copyrights, and licenses _____
 - (11) Tangible personal property, e.g., boats, automobiles, jewelry, paintings, stamp and coin collections, furniture and furnishings and personal effects _____
- Total Assets \$ _____

Owed to	Due Date	Secured By	Amount
_____	_____	_____	\$ _____
_____	_____	_____	\$ _____
_____	_____	_____	\$ _____

Total Liabilities \$ _____

Net Estate \$ _____

Insurance Co. including group policies provided by employer	Policy No.	Face Amount	Beneficiary
--	-------------------	--------------------	--------------------

_____ \$ _____

_____ \$ _____

_____ \$ _____

_____ \$ _____

Insured	Policy No.	Insurance Co.	Face Amount
----------------	-------------------	----------------------	--------------------

_____ \$ _____

_____ \$ _____

Name	Interest Owned	Estimated Value
-------------	-----------------------	------------------------

_____ \$ _____ \$ _____

_____ \$ _____ \$ _____

_____ \$ _____ \$ _____

Specific Dispositions	Name	Address	Relationship
------------------------------	-------------	----------------	---------------------

Witnesses: Residing at

..... Residing at

..... Residing at

You, the Testator, may be surprised at the amount of information necessary to prepare the will.

Please prepare a family tree. Not only will a family tree be helpful in preparing the will but such information will assist in probating the will. Surrogate's court rules often require the submission of a family tree in connection with probate petitions. It is advisable to have the testator execute an affidavit specifying distant relatives or friends and providing sufficient detail of the family. Surrogate's practice in several counties requires affidavits of remote relationships in such instances, probate will proceed much more expeditiously with such information and supporting proof.

Notes

For purposes of 11(b), see [US Bank National Association for Deutsche Bank, Alt-A Securities Mortgage Loan Trust Series 2007-2 v. McGown](#), 60 Misc. 3d 808, 80 N.Y.S.3d 643 (Sup 2018) stating that the mortgagor was required to identify his daughter on a deed transferring property from the mortgagor to his daughter as a minor in accordance with the Uniform Transfers to Minors Act in order to give the assignee of the note and mortgage actual or constructive notice of the minor's status so that the daughter could be served in a foreclosure action in compliance with the statute setting forth procedures for serving infants. See also [Secretary of U.S. Department of Housing and Urban Development v. Estate of Key](#), 394 F. Supp. 3d 311 (E.D. N.Y. 2019) stating that under New York law and procedure, the estate is a necessary party to a foreclosure action when the mortgagor has died.