

Don't Let New York State Decide Who Will Inherit Your Possessions: Write a Will

By Richard H. Sargent Recently, we've seen the country enveloped in a lively debate over personal and real property rights. Many have made it abundantly clear that they do not like the government telling them what to do. Yet it never ceases to amaze me that in a climate of adamant opposition to government interference that so many are willing to allow the state to dictate what happens to their property and possessions after they die. According to new statistics from the New York State Unified Court System, in 2011 the ranks of New Yorkers outside New York City who handed over to the state the ability to determine what happens to their estates after they die reached the highest level in nine years. These are individuals whose estates went to what is called "administration" in surrogate's court – as opposed to "probate" – because they died without a will. Administration filings outside New York City totaled 7,877 in 2011 – the highest amount of such filings since 2002, when there were 8,033 filings. By dying without a will, individuals cede to the state the right to choose who will oversee their estate. This person, called an "administrator," is responsible for paying off the deceased's debts and then distributing what is left of the estate in accordance to New York's laws of intestacy. In practice, it's a lot like asking your local legislator, "Can you find someone to do something with everything I've worked hard to acquire throughout my life?" State law establishes a pecking order for who gets first dibs on being appointed the administrator, with the surviving spouse at the top of the list, followed by children, grandchildren, parents, and siblings. Familial disputes over who should be named administrator can lead to costly litigation, which is usually not the legacy one wants to leave. The surviving spouse of someone who died without a will is entitled to \$50,000 and half of the estate. The surviving children are entitled to the remainder of the estate "by representation," meaning generations get equal distributions. Questions of need, merit and love are ignored by the law. Since 2009, administration filings outside New York City have been steadily increasing, and if this trend continues there could be huge financial ramifications for Upstate baby boomers. According to a 2010 MetLife study

, baby boomers are expected to inherit \$8.4 trillion. Seventeen percent of baby boomers had already received an inheritance by 2007, but two thirds of them will eventually receive one. The big question is whether the estates of baby boomers and their parents will be distributed in accordance to their wishes outlined in a will or in accordance to New York state statutory formula. While I am happy to report that probate filings outside New York City climbed to 30,385 – their highest level since 2008 – many New Yorkers lack a will. A 2007 Harris-Interactive study found that 55 percent of American adults lacked a will. A 2011 study by the Central New York Community Foundation predicted that over a 10-year period, \$22 billion in wealth would be transferred

between generations in the five-county Central New York region. There is little doubt that this transfer of wealth could revolutionize the region. But the question for Central New Yorkers remains whether the region will be shaped by their last wishes or by statutory formula.