

Surrogate's Court

County of Ocean, New Jersey

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A PLANNING GUIDE TO THE PROBATE PROCESS

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THE PROBATE PROCESS...

Probate is the process whereby a Will is proved to be valid by a Surrogate, who has the authority to determine the authenticity of such a document. It also involves appointing an individual for an Estate when someone dies without a Will.

Probate is done when someone dies with assets in their name alone. The individual named in the Will as the Executor/rix (hereinafter referred to as the personal representative) would come to the office of the Surrogate with the original Will and a certified copy of the death certificate.

Application is made to the Surrogate of the County where the decedent resided at the time of death. If the Will is self-proving (language added to the will that allows the document to prove itself), no further proof or testimony will be necessary to probate the Will.

If the Will is not self-proving, a proof of one of the witnesses is necessary to complete the probate.

Certain qualification forms would need to be signed by the personal representative. No probate can be completed until the day following the tenth day after death. Fees will be charged as set forth by the New Jersey legislature. It is a relatively inexpensive process.

If someone dies without a Will, an individual can make application to be appointed as Administrator/rix (also hereinafter referred to as the personal representative) to represent the Estate.

After signing qualification papers, the Administrator/rix would need to post a bond that represents the full value of the Estate and file renunciations from any individual that has a prior or equal right to be appointed.

The Surrogate, as part of the process, will issue letters and certificates evidencing the appointment of the individual to the Estate which will allow them to access and transfer assets such as bank accounts, stocks, bonds, etc.

Once the probate is complete, the personal representative of the Estate has sixty days in which to notify the heirs at law, next of kin and beneficiaries that application was made for probate.

THE IMPORTANCE OF HAVING A WILL...

A Will is defined as an instrument, that comes into effect upon death, by which a person makes a disposition of property both real (land and buildings) and personal (bank accounts, stocks, and personal items). Without a Will, an individual's assets will be distributed according to New Jersey law.

A properly drawn Will should name an Executor/rix and alternate in case the individual first named is unable to serve. If applicable, it should name a Trustee if a Trust is created in the Will and a Guardian if there are minor children who will need to have someone appointed to handle their affairs.

The Will should provide that anyone named not be required to post a bond for their position. It should state specific bequests and determine how the rest or residuary of the Estate will be distributed.

Anyone over the age of eighteen can have a Will. It should be signed and witnessed by two individuals who are at least eighteen years of age and if properly worded, will become self-proving with the addition of signatures by the same witnesses and the signature of a notary public.

Whether your Estate is large or small, it is beneficial to have a properly drawn Will. A minor mistake may invalidate your good intentions. It is suggested you seek the services of an attorney as the risk of problems are too great. Not having the Will properly drafted or executed can cause delays, great expense and may force the Will to be probated in the Superior Court.

Remember that after the Will is executed, any changes to the document should be done through a codicil (a separate document that changes certain parts of a Will) or by a new Will. If markings, cross-outs, or handwritten changes exist on the will, the Surrogate will be unable to act, forcing probate in the Superior Court.

The person named in the Will as the personal representative will have the responsibility to

- a) locate and inventory all of the assets of the Estate;
- b) pay the outstanding debts;
- c) file the appropriate inheritance or income tax returns;
- d) have the necessary paperwork prepared for the transfer of all real and personal property;
- e) pay all administrative, funeral and legal fees;
- f) open and maintain an Estate checking account;
- g) disburse the Estate funds to the named beneficiaries and file the appropriate refunding bonds and releases (documents that show someone received their inheritance).

WHAT IF I DIE WITHOUT A WILL?...

When a person dies without a Will, there are two types of legal procedures which may occur.

A) Affidavit

If there is a surviving spouse or domestic partner and the property (real and personal) owned by the decedent alone does not exceed \$50,000.00, an Affidavit of Surviving Spouse or Affidavit of Domestic Partner may be issued to dispose of such property without the necessity of formal Administration.

If there is no surviving spouse or domestic partner, but there are heirs and there is property owned in the decedent alone, which does not exceed \$20,000.00, an Affidavit of Heir may be issued to one of those individuals closest in kinship to the decedent without the necessity of formal Administration. Consents from certain individuals may need to be filed.

If all procedures are performed properly, the Surrogate will issue either an Affidavit of Surviving Spouse, Affidavit of Domestic Partner or an Affidavit of Heir, which will enable the individual to act with the same power as the decedent over the property reported on the Affidavit. The documents cannot be issued until the sixth day after death.

B) Administration

If there is a surviving spouse or domestic partner and the property owned by the decedent alone exceeds \$50,000.00, the spouse or domestic partner may be appointed Administrator/rix of the estate. If there are others who are entitled to inherit a bond will be posted by the surviving spouse or the domestic partner for the full value of the estate.

If there is no surviving spouse or domestic partner and the property owned by the decedent alone exceeds \$20,000.00, then an heir who is next in line may be appointed Administrator/rix of the estate. A bond will be required to be posted that represents the full value of the estate. Renunciations may need to be filed.

The Surrogate's Court requires a certified copy of the Death Certificate and qualification papers signed by the applicant(s) for an Administration. Once completed, Letters of Administration and certificates will be issued. These documents are not issued until the sixth day after death after all requirements are met.

C) Heirs - Who May Be Appointed

To properly understand who can be appointed under an Affidavit or Administration, the following relationship should be explained.

Children of the decedent are equally entitled to act. Normally, one child can act in such capacity. Therefore, if a decedent has four children, three would renounce in favor of the fourth. In the alternative, they may be appointed as Co-Administrators.

If no child survives the decedent, but there are grandchildren, one may be appointed where the others renounce, or they may be appointed Co-Administrators.

If no child or grandchild survives, but the decedent is survived by parents, one parent may renounce in favor of the other, or they may be appointed Co-Administrators.

If no child, grandchild or parent survives, but the decedent is survived by brothers and sisters (siblings), one may be appointed where the others renounce, or they may be appointed Co-Administrators.

If no child, grandchild, parent, or sibling survives, but the decedent is survived by nieces or nephews, one may be appointed where the others renounce, or they may be appointed Co-Administrators.

If none of the above survive the decedent, next in line are the decedent's grandparents, followed by aunts and uncles, then cousins, etc., (the grandparents' descendants).

Finally, if none of the above relatives survive, but the decedent is survived by stepchildren (not adopted), one may be appointed where the others renounce, or they may be appointed Co-Administrators.

Remember that in both Affidavit and Administration applications to the Surrogate's Court, renunciation or consent forms will be required to be filed from the appropriate individuals.

HOW IS MY ESTATE DISTRIBUTED WITHOUT A WILL?...

New Jersey law provides how your Estate will be distributed if you do die without a Will.

The property referred to in this section deals with assets in the decedent's name alone.

- A) If you die leaving a spouse or domestic partner and children of the same marriage, the spouse or domestic partner will inherit the entire estate. (i.e., no stepchildren or children of a prior union)
- B) If you die leaving a spouse or domestic partner and children of a prior union, the spouse or domestic partner will inherit the first 25% of the estate, but not less than \$50,000.00 nor more than \$200,000.00, plus one-half of any balance of the estate. Your children take the balance equally. Grandchildren will take a portion of their deceased parent's share
- C) If you die leaving a spouse or domestic partner, child or children a stepchild or stepchildren, the spouse or domestic partner will inherit the first 25% of the estate, but not less than \$50,000.00 nor more than \$200,000.00, plus one-half of any balance of the estate. Your children take the balance of the estate equally. Grandchildren will take a portion of their deceased parent's share.
- D) If you die leaving a spouse or domestic partner and no children, but are survived by parents, the spouse or domestic partner will inherit the first 25% of the estate, but not less than \$50,000.00 nor more than \$200,000.00 plus three-fourths of any balance of the estate. Your parents take the balance equally.

E) If you die leaving a child or children but no spouse or domestic partner, children will inherit equally. Grandchildren will take a portion of their deceased parent's share.

F) If you die leaving no spouse or domestic partner, children or grandchildren, your parents take all. If no parent survives, your brothers and sisters will take equally.

G) Where there is no immediate family, your property may go to more distant relatives (grandparents, aunts, uncles, cousins, etc.), then to stepchildren, or even revert to the State.

JOINT OWNERSHIP...

Property, both real and person may be transferred through joint ownership. Real estate owned by husband and wife or domestic partners, as tenants by the entirety, becomes the sole property of the survivor.

If two or more persons other than husband and wife or domestic partners own real estate together, each owns an individual share as tenants in common, unless the deed states that they own as joint tenants with rights of survivorship.

An interest in real estate owned jointly, will become the property of the survivor upon death.

LIFE INSURANCE...

A life insurance policy is a contract between the policy holder and the company. The proceeds are paid according to the terms of each contract. It is not considered an asset of the Estate unless paid to the Estate. It is important to verify that your primary and alternate beneficiaries are named on your designation form.

SOCIAL SECURITY, PENSION AND VETERAN AFFAIRS...

The Social Security Act provides for survivor's benefits to the family and other benefits to eligible persons. Benefits may include monthly payments and a lump sum death payment.

Upon the death of a person who may be entitled to benefits, a member of the family or interested party should contact the local Social Security office for further information.

If applicable, a widow, minor children or family members may be eligible for pension benefits. Contact the appropriate pension company official for further information.

If the decedent was a Veteran, the Veteran's Administration should be contacted to inquire about burial

or death benefit information.

LETTER OF LAST INSTRUCTIONS...

Few persons expect to die and relatively few leave their affairs in perfect order. Those who administer an Estate often find themselves without necessary information.

To ease their job, it is advisable to leave your personal representative a letter of last instructions. This document, outside of your Will, will act as an information source as well as an indication of how your affairs will be handled.

The document may contain the following information:

- 1) names and addresses of those individuals you would want contacted upon your death;
- 2) a list of family members and their relationship;
- 3) a statement as to where your Will can be located;
- 4) instructions as to funeral and burial arrangements;
- 5) where your important papers may be located such as marriage/ divorce, automobile title, discharge from military, etc.;
- 6) cemetery plot information;
- 7) location of safe deposit box;
- 8) list and location of insurance policies;
- 9) list and location of all bank accounts, checking and savings;
- 10) list of information on pension, trusts, etc.;
- 11) location of all stocks, bonds, securities, etc.;
- 12) statement of all real property with location of mortgages, deeds, etc.;
- 13) location of all income tax returns for previous five years; 14) current bills, debts and cancelled checks for five years.

TRANSFER OF ASSETS...

In order to make a transfer of an asset belonging to the decedent at death, the personal representative will usually need to perform the following functions:

A) acquire from the Surrogate certificates or the proper Affidavit;

B) file with the New Jersey Inheritance Tax Bureau in Trenton for a tax waiver. A tax waiver is a document issued by the State of New Jersey which releases the property from any inheritance tax claim which could be asserted by the State.

To determine if a waiver is necessary, use the following formula:

1) Personal Property

a) If money belonging to the decedent at death is in a joint bank account in the name of a decedent and their spouse, domestic partner, grandparent, child, step-child, legally adopted child of their issue, the bank will release the funds To the surviving owner upon the execution of an affidavit of waiver or L-8 form, which can be obtained from the respective bank. No tax waiver is necessary.

b) If the money belonging to the decedent is in the decedent's name alone, but will be distributed by a Will or by law to the spouse, domestic partner, parent, grandparent, child, step-child, legally adopted child or their issue, the bank will release the funds to the personal representative of the estate with a Surrogate's Certificate. The balance can be released when the appropriate tax waiver is given to the bank by the Estate Representative.

c) If money belonging to the decedent at death is in a bank account in the name of the decedent alone, the bank will freeze the account, but will allow withdrawal of one-half of the funds upon receipt of a Surrogate's certificate. The balance can be released when the appropriate tax waiver is received by the bank.

In order to acquire a tax waiver, all inheritance taxes due to the state of New Jersey must be paid. Even if no tax is due, a form may still have to be filed to demonstrate to the Inheritance Tax Bureau that the property is exempt.

Upon evidence that the Estate is exempt from taxes and/or payment of any taxes due, the bureau will issue a tax waiver. This waiver when presented to the bank will release the frozen funds.

2) Real Property

Real property, if in the decedent's name alone, will pass according to the terms of the Will or if no Will, then by the laws of intestacy.

If the property is owned jointly with rights of survivorship, it will pass to the surviving owner.

If owned as tenants by the entirety as husband and wife or domestic partners, the property will pass automatically by operation of law to the surviving spouse or domestic partner.

3) Motor Vehicles

Title held jointly in the name of the decedent and their spouse or domestic partner becomes the property of the sole owner upon death of the other spouse or domestic partner. No Surrogate's certificate or Affidavit is required. The title can be changed by the survivor upon them appearing at a Motor Vehicle office and executing a proper Affidavit.

If the title is in the decedent's name alone or jointly with another person other than the decedent, the personal representative or co-owner must show a Surrogate's certificate or Affidavit together with the original title, registration, and insurance identification card.

4) Stocks, Bonds, and other Securities

Examination of the stock certificate should be done first to determine who is the registered or transfer agent. It will then be necessary to contact that individual to ascertain the company requirements for the transfer of the stock.

Normal requirements include a transfer agent's transmittal form, an affidavit of domicile, certified copy of death certificate, Surrogate's certificate, the original stock certificates and if a New Jersey corporation, a tax waiver or affidavit of waiver.

Stock that is owned by the decedent and another individual may have the same requirements as indicated above in order to transfer the stock to the surviving owner.

5) Clearing Title and Transferring Property

Unpaid inheritance taxes are a lien on New Jersey real estate and shares of stock of corporations and financial institutions organized under laws of New Jersey.

The New Jersey Inheritance Tax Bureau sends waivers that are required to clear title to the land and transfer ownership of bank accounts or securities. If there is a tax, a bill is submitted and the waivers sent when the tax is paid.

To clear title to the real property, a tax waiver is filed with the County Clerk in the county where the land is located. Land held by husband and wife or domestic partners as tenants by the entirety need not be reported and may be transferred without a waiver.

To transfer stocks, shares and securities of financial institutions and New Jersey Corporations, the personal representative will need waivers to obtain assets. The waivers will be sent from the New Jersey Inheritance Tax Bureau to the particular bank, institution or individual.

TAXES THAT MAY INFLUENCE YOUR ESTATE...

The New Jersey Inheritance Tax is a tax on the right to receive an inheritance or property at the time of someone's death and is determined on the relationship of the beneficiary to the decedent.

There is currently no tax imposed on a transfer to a spouse, domestic partner, child, adopted child, step-children, grandchildren, parent, or grandparent.

On a transfer to a brother or sister of the decedent, a wife or widow of a son of the decedent or husband or widower of a daughter of the decedent, the first \$25,000.00 is exempt. Any amount over that up to \$1,075,000.00 is currently taxed at 11%.

Any other transferee, distributees or beneficiaries (other than those entirely exempt such as charities or educational institutions) will be currently taxed after the first \$499.00 at the rate of 15% up to \$700,000.00 and 16% on anything over that amount.

Depending on the size of the Estate, Federal Estate Tax may apply. It is suggested you seek the guidance of an attorney, accountant or Estate planner to address those concerns.

TRUSTS...

A Trust created under a Will can be established for minor children, adults or any other designated beneficiary. It can be done for any number of reasons including tax savings, the ability of a beneficiary to handle finances or particular distribution of one's assets.

The Trust created under a paragraph in the Will appoints a Trustee. The Trustee administers and invests the funds for the Trust and pay income and/or principal from the Trust as set forth under the terms of the Trust in the Will.

GUARDIANSHIPS FOR MINORS...

A Guardian for a minor can be named in a Will or the Surrogate can appoint a Guardian if a minor receives an inheritance or proceeds from a lawsuit.

Normally, the money is deposited in the Ocean County Surrogate's Office Intermingled Minor Account and held until the minor reaches the age of eighteen.

As an alternative, the Guardian would post a bond and invest the monies themselves on behalf of the minor. If the minor owns any real property and the Guardian wishes to sell it, they must first obtain court permission.

POWERS OF ATTORNEY...

A Power of Attorney is a written document in which another adult person is authorized to act on your behalf regarding real property, bank accounts and other financial and legal matters.

It is generally used when someone is unable for some physical or mental reason to carry out his or her affairs. With this instrument, a spouse, friend or family member, called an Agent, can act on behalf of you, the Principal.

There are generally two kinds of power of attorney: limited and general. The limited power of attorney gives a person authority to act for a specific purpose. An example is the sale of a house when the owner cannot be present. The agent with the power of attorney can sign the documents in the principal's absence.

With a general power of attorney the agent has the authority to act on anything and everything for the principal if he or she becomes disabled or mentally incompetent. Most general powers of attorney will have a provision that will allow the agent to act even in the event of the disability of the principal. A power of attorney automatically ends at the death of the principal.
