FAQs ABOUT NEW JERSEY WILLS

Why is it important to have a will?

Making a will is a very important step in your overall financial plan. A will can save your heirs a tremendous amount of time, money and aggravation. Moreover, it can provide an orderly transfer of your property upon your death. Making a will can assist your family to avoid the cost of paying for an expensive bond. Moreover, by having a will this can avoid countless hours of disagreement amongst your heirs.

In a will you are able to decide to whom, when, and in what amounts your assets should go. You select your executor or personal representative, the one who shall be responsible for the disposition of the estate. By having a will, you may avoid a forced sale of your property, or costly and tedious applications to the courts for the right to sell it. You have greater assurance that your plans will be carried out as you desire.

Meanwhile, if you die without a will then your estate must be distributed according to New Jersey intestacy laws. These provisions are very general and are not flexible. Moreover, the intestacy laws will direct who shall administer your estate, among whom, and how it shall be divided. If you do not name an executor then your estate most likely will not be distributed as you wish. Finally, if you die without a will, then you will lose the right to name a guardian for your minor children. This is of vital importance, especially if your spouse should not survive you.

It is important to emphasize that wills are not do-it-yourself projects. Don't try to save a few bucks and prepare your will from a Staples kit or from some type of internet company. There are plenty of affordable attorneys in New Jersey who can draft you a quality estate plan for an affordable fee. Although many wills are prepared without any legal assistance, the risk is too great. One minor mistake could invalidate your entire will.

What are the steps in preparing a will?

A will is a document that will stand up in court, and it must be tailor-made to satisfy the needs of your family. Therefore, a will must be carefully thought out by you. The will should be prepared by an attorney who specializes in will drafting or estate planning. Theodore Sliwinski, Esq. has prepared thousands of wills. He has prepared wills for small estates to multi-million dollar estates. He prides himself on providing quality legal services at affordable rates. Having a will prepared does not have to cost you a fortune. Mr. Sliwinski, Esq. believes that everyone should be able to afford to have a will prepared at a reasonable rate.

What are the legal requirements of a valid will?

Any adult who is of sound mind is legally entitled to make a will. There are only a few legal requirements that a valid will must satisfy:
• The will must be signed by at least two witnesses. The witnesses must watch you sign the will. The witnesses don't need to read it. Your witnesses, must be people who won't inherit anything under the will.

• If your will is self-proven, you and your witnesses must sign an affidavit (sworn statement) before a Notary Public. In New Jersey a lawyer is also considered to be a notary public. A self-proven will can help simplify the Probate Court procedures required to admit a will to probate.

• You do not have to record or file your will with any government agency. You should keep your will in a safe, accessible place and be sure the person in charge of winding up your affairs (your executor) knows where it is.

What some important considerations that I need to know when I make a will?

• You do not need to make an itemized statement of your assets, nor do you need to state the disposition of your property item by item.

• You can change your will at anytime you wish, as your assets, beneficiaries or desires change.

• Your will is not recorded before death; no one needs know of it if that is your wish.

• The existence of the will does not affect your ability to sell or dispose of property. You may continue as though you had not written the document.

• Even though New Jersey permits a beneficiary to witness a will, it is recommended that a beneficiary witness should never be used, in order to avoid future challenges as to conflict.

• Start your estate planning by making a list of everything you own and owe. This statement will show exactly where you stand financially. Thereafter, you must decide to whom you will leave your real and personal property.

Who should I choose as an executor?

The selection of an executor to administer the will is an extremely important decision. This decision should be given a lot of thought before it is made. Your executor could be a beneficiary of your estate, a member of the family, your legal or financial advisor, your accountant, your family lawyer, or a trusted friend or a business associate. Your will also should name an alternate executor in case your first selection dies before you, or is unable to serve.

The person you choose should be honest, organized, and good at communicating with people. If possible, name someone who lives in New Jersey and who is familiar with your financial matters; that will make it easier to do chores like collecting mail and finding important records and papers.

If the estate is very large and complicated, then it might be advisable to choose a bank or a financial institution to be the executor. Moreover, if the family members simply have a history of constant fighting, then it is very advisable to choose a bank as an executor. A bank is experienced and familiar with accounting and management details. It is
financially responsible and a continuing institution. An individual may die, but a bank has continued life. The drawbacks about choosing a bank as an executor is that their fees may be very high. Banks now charge fees for absolutely anything. The amount of the executor fees that a bank could charge could be very high.

In selecting your executor the choice should be business like and not sentimental. Your executor as the important responsibility of settling your estate and seeing that the wishes expressed are faithfully carried out. I advise my clients to choose an executor who is honest and who can handle filling out paperwork. The main role of an executor is basically to fill out a significant amount of paperwork. In my experience the executors who have a "knack" in filling out paperwork, most often are excellent executors. They perform their duties correctly and in a prompt manner. Alternatively, the executors who have difficulty filling out the paperwork often turn the probate process into a mess and a disaster.

**Can I name more than one executor?**

Yes, you can name two or more executors to serve at the same time. However, this is often a terrible idea. Both executors will be required to sign all of the estate checks and sign and any and all of the legal documents. This requirement can significantly slow down the probate process, thereby aggravating any anxious heirs who "want their money now." I always advise a client to only choose one executor. If multiple executors are chosen, then more often than not this only leads to additional disputes amongst the heirs, and the probate process is drastically slowed down.

**What are the duties and responsibilities of an executor?**

An executor has many duties and responsibilities. The more complex and larger the estate then the more responsibilities the executor will have. Here are a few of the tasks that an executor may be required to do:

- Offer the will for probate at the local county surrogate
- Qualify as executor, and obtain a certificate of authority
- Obtain a bond for the estate. A bond is essentially an insurance policy for the estate. A bond provides insurance for all of the heirs in the unfortunate event that the executor or another heir should dissipate the estate
- Locate and take possession of all property
- Try to collect all of the debts owed to the decedent or the estate
- Try to settle and pay all of the debts that the estate may owe. Discover and assert all rights, and line up claims owed by the estate
- Prepare and file an inventory of all property and interest of any kind belonging to the estate, listing the appraised value
- Review all assets, liquidating those of doubtful character
- Advertise for claims and pay them in the order cited by law
- Sell any real estate that was owned by the decedent
- Figure out and pay all outstanding taxes
• Pay any gifts specified under the will
• Distribute the estate
• Prepare a final accounting for the estate to the court, if required

How is the will formally executed?
A will must be written, signed by the testator who is the maker of the will, and it must also be witnessed. The original copy is the legal document and must be signed.

In New Jersey a will must have at least two witnesses to be admitted to probate at the Surrogate's Court. The testator and the witnesses are required to be present at the signing, and each must see the others sign. The witnesses do not have to read it or know what it contains. However, they must be told by the testator that it is his will, and asked to sign as witnesses.

It is imperative that a will must be self-proven. This term basically means that the lawyer also notarizes the will. If a will is only witnessed by two people, and if it is not self-proven, then it could ultimately be very difficult to submit the will for probate.

Why is it important to have a self-proven will?
If the witnesses and the testator execute an affidavit before a Notary Public, then it will not be necessary for either of the witnesses to appear in County Surrogate when the will is admitted to probate. In New Jersey all lawyers are also considered to be a Notary Publics. Many of older wills that date back before the 1990's are not self-proven. It may be impossible to admit these wills to probate if the witnesses can't be located. Therefore, it is imperative that any old wills that are not self-proven should be revised and redone. If an old will can't be admitted to probate then it could ultimately cost additional thousands of dollars of extra legal fees. Therefore, any old wills should be updated.

Why is it important to have a common disaster clause in a will?
A well-drawn will should contain a common disaster clause. A common disaster clause establishes alternate beneficiaries if both husband and wife dies within a stated period of time. Without a clause, if both a husband and wife die with no way to determine who died first, then their individual property is disposed of as if they had a widow and widower. In summary, the goals of an estate plan can be severely thwarted if the parties do not have a common disaster clause. Your estate could eventually be distributed to people to whom you never could have imagined would inherit your hard earned money.

How should I safe-keep my will?
You should keep your will in a safe place. However, you should always let the executor know where it can be found. Both a husband and wife should have their own individual wills. Moreover, each spouse should know where both are kept.

The will should be kept in a secure place such as a safe deposit box or fire proof strong box. But more importantly, your executor should know where it can be found. It is a good idea to give a copy of the will to your executor with a notation where the original will can be located.
Why should I keep my will up to date?

It is very important for a person to periodically review his or her will to keep it up to date. Keeping a will current is just as important as making one in the first place. The major life changes such as marriage, birth of a child, death, changes of witnesses, purchases or sale of property, a change in your financial status, or a change in the estate tax law makes it imperative that a will should always be updated.

How can I change my will?

The safe way to change your will is to have a new one drawn. A codicil may be effective. However, a codicil can cause potential legal issues if there is a will contest. A codicil is a separate document used to make minor changes to a will. It must be signed with the same formality as the will itself. It is not necessary to have the same witnesses on the codicil and the original Will. Most lawyers save all of their wills in some form of electronic formal, that can be readily accessible. Therefore, in most cases the price to draft a codicil to a will is the same as simply revising the will. I always advise a client to simply revise the will. If there is future estate litigation then the codicil(s) can be compared to the will, and it could create all types of potential legal traps and minefields.

It is important to emphasize that you should not try to change your will by drawing lines through items, erasing, writing over or adding notations. This may destroy it as a legal document.

Don't forget that much of your property will probably pass outside of your will. For example, retirement accounts, 401K plans, joint or payable-on-death bank accounts, stocks registered with a transfer-on-death form, and life insurance proceeds go directly to the beneficiaries you've named. Your will has no effect on them. If you've changed your mind about who you want to inherit your estate, then you will also need to change the documents on which you named the beneficiary.

What can occur if I don't have a will. Who will handle my estate upon my death?

When there is no will, then an administrator is appointed by the County Surrogate. Any close relative may be appointed. For an individual or a bank to be appointed as an administrator then all of the other heirs must renounce their rights. In most administration cases a surety bond must be furnished by paying a premium to a surety company for signing this bond. Once the administration application is complete, then the County Surrogate will grant letters of administration showing the authority to act. These letters of administration give the administrator the same authority to act as an administrator.

An administration of an estate is more expensive than simply admitting a will to probate. The primary reason for the additional expense is because bonds are always required in an administration. Bonds are basically insurance for the estate. The bond will insure the other heirs that the administrator or another heir will not dissipate and wrongfully spend the monies of the estate. Bonds are expensive, and if the estate administration is prolonged, then these costs can be prohibitive.
What is a Letter of Last Instruction(s)?

Those who administer an estate and to take care of what is left often find themselves without necessary information. To assist an executor or the decedent's loved ones, it is advisable to give your executor or attorney a letter of last instructions. This is a separate legal document that is separate and apart from your will. This letter which is to be opened upon your death, should contain the following information:

- Names and addresses of those to be notified at death, and relationship of members of family and relatives.
- Statement as to where your will may be found.
- Instructions as to funeral and burial. You may wish to specify, for example, that, as a veteran you want to be buried in a national cemetery.
- Where your birth or baptismal certificate, certificate of auto ownership, social security card, marriage or divorce certificate, naturalization and citizenship papers, and discharge papers from the armed forces may be found.
- Where your membership certificates in any lodge or fraternal organizations which provides death or cemetery benefits may be found.
- The location of any safe deposit boxes you may have, and where keys are kept.
- A list of your insurance policies and where they may be found.
- A summary of all of your finances.
- A list of all bank accounts, checking and saving; their location and where the passbooks are kept.
- A list of all other savings accounts; for example, credit union deposits, etc., and passbook locations.
- A statement concerning any trusts and/or pension systems from which your estate may be entitled to receive benefits. A list of all stocks and bonds or other securities you own, and where they may be found.
- A statement of all real property owned by you with the location of deeds, mortgages, abstracts, and insurance policies for real property owned.
- A location of copies of income tax returns for previous 5 years.
- List of debts and names of creditors - with addresses.
- A statement of reasons for actions taken in your will, such as disinheritances. It is usually better to place the explanation in a separate but accompanying letter, rather than in your will, to avoid a complicated will and expensive litigation.
- List of any gifts made and information needed for estate tax.
- A list of any payments made, especially for funeral expenses.

What is a guardian?

If a person dies with minor children, and if he leaves no spouse, then a guardian may be appointed by the court for minor children. A guardian will basically safeguard the interests of the children, and ensure that their inheritance is not squandered by the adults.
In order to sell or dispose of a minor's interest in a parent's land, a guardian must be appointed by the Probate Court to sign the deed for them. Any expense of having the guardian appointed, bond for the guardian, appraisals, court costs and attorney's fees are charged to the minor, and deducted from his share of the estate.

In some cases, the guardian applies to the Probate Court for permission and approval to sell and/or to spend the children's money for their support or education. The guardian must also account for income and disbursements - by the court action if necessary.

**What are the New Jersey probate requirements?**

The requirements to admit a will into probate are very basic. There are three general requirements:

- The decedent must be a resident of the specific County Surrogate, or if a nonresident, must have owned real property in New Jersey.
- A certified death certificate must be provided to the surrogate.
- The original will must be given to the County Surrogate.
- The executor must fill out the probate application and pay the filing fees.

**How is a will probated?**

Upon the death of the testator or testatrix, the will is probated. This is the legal process which establishes the genuineness of the will. It is done by the County Surrogate or the Probate Court in the county where the testator or testatrix resides at the time of death. Many people have the erroneous conception that probate is a costly and lengthy procedure. In most cases this conception is untrue. New Jersey probate laws are basic and very "user friendly."

About five years ago there was a major fad in the legal world. Many lawyers were advertising that living trusts were the "best thing since sliced bread." Living trusts were advertised everywhere, on TV, in the newspaper, and at seminars. The bar basically outlawed lawyers from misrepresenting the benefits of living trusts to the public in their advertisements. Probate can be a very basic legal process. The component that can make the probate process expensive is when the heirs start to fight. If the heirs start to litigate during the probate process, then these costs can be very expensive.

The executor or the executrix is appointed by going to the Surrogate Court with the original will, and a certified death certificate. If the will is not self-proven, at least one of the witnesses who signed the will must prove his or her signature on the will.

If the will, for any reason is not properly executed, then the County Surrogate can advise the executor as to the proper procedure in order to allow the will to be admitted to probate.

**What are the guidelines for an executor/administrator?**

If you have just probated a will and have been named Executor, or if you have qualified as Administrator for an estate with no will, then you may be asking yourself the question, "What do I do next?" Here are some basic guidelines to assist you.
• A Notice of probate of the will must be served on all interested parties within sixty days of probate. The Notice of Probate of the will must advise them of the name and address of the Executor. A copy of the will should accompany this notice. If the will contains any charitable bequests, then the notice must also be given to the Attorney General of the State of New Jersey, Division of Law, P.O. Box 112, Trenton, NJ 08625. After you send out the Notices of Probate of the will, then you are to file a proof of service by filing an affidavit that all parties were served by personal service, or regular and certified mail. The proof of service is filed with the County Surrogate.

• The Executor/Administrator is responsible for determining and marshaling all assets of the estate. An estate checking account must be opened from which bills are paid. A bank will not open up an estate account unless a Federal ID number for the estate is obtained. You can call the IRS AT 800-829-1040 for an ID number. Moreover, an IRS form entitled SS4 must be completed to obtain a Federal ID number for the estate.

• The Executor/Administrator is responsible for all debts, last illness expenses, inheritance and estate taxes, and administrative expenses from the decedent's assets.

• The Executor/Administrator is responsible for filing appropriate State and Federal tax forms as applicable, and forwarding any tax payments due.

• The Executor/Administrator is entitled to a commission of 5% of the value of the gross estate (for estates up to $200,000.00) and 6% on income.

• The Executor/Administrator may be required to prepare an accounting of the estate assets and disbursements and proposed distribution. There are two types of accountings. The first type is called an informal accounting, and it is used when the heirs are friendly and they don't dispute the distribution plan or how the estate was handled. If the estate administration becomes adversarial, then another type of accounting must be prepared, and it is called a formal accounting. A formal accounting is usually prepared with the assistance of an accountant, and it is typically very expensive.

• The Executor has the obligation to distribute the net estate in a timely manner, in accordance with the terms of the will. The Administrator distributes in accordance with the intestacy laws of the State of New Jersey.

• Before any heir receives his share of the estate, he must execute a form called a Refunding Bond and Release. Basically, this form specifies that if any new bills become due for the decedent, then the heir will return any monies paid to the estate. Once the executor receives the executed Release and Refunding upon, then the Executor/Administrator will send a check to the heir for his share of the estate. The original refunding Bonds and Releases are filed with the County Surrogate. The filing fee is $5.00 per page.

• The Executor/Administrator is required by New Jersey law to initiate a child support enforcement order for any beneficiary receiving in excess of $2,000, prior to distribution of any money to the beneficiary. The search shall be conducted by a private judgment search company that will verify results.
What types of property are not distributed under a will?

It is important to emphasize that all of a person's property is not distributed under his will upon death. Some types of real estate ownership, 401K plans, life insurances, pay on death bank accounts, are assets that are often not part of the decedent's probate estate. Therefore, these types of assets pass outside of the will and the estate.

Another way to transfer property is through joint ownership. Real Estate that is owned by both husband and wife automatically becomes the sole property of the survivor. If two or more persons other than husband or wife own real estate together, each owns an undivided share as tenants in common, unless the deed states they are to own "as joint tenants and not as tenants in common." Generally, real estate held in joint ownership goes to the survivor or survivors when one of the joint owners dies. An interest in real estate owned by tenants in common passes to the heirs of the deceased.

Personal property may be owned jointly with right of survivorship, the survivor becoming the sole owner. Checking accounts, saving accounts, or stocks and bonds may be held in joint ownership with right of survivorship, or as tenants in common.

Finally, it is important to note that 401K plans and life insurance polices pass outside of the will. Even if you specify in your will that an heir shall receive the proceeds from your 401K plan and your life insurance policy, this will not control how these assets are distributed. In a 401K plan, the beneficiary that you name will control who receives this asset upon your death. Moreover, a life insurance policy is a separate contract. The beneficiaries listed in the policy will receive the life insurance proceeds regardless what the will specifies.

What are some points to know when making a will?

- You don't need to make an itemized statement of your assets, nor do you need to state the disposition of your property item by item.
- You can change it at any time you wish, as your assets, beneficiaries or desires change.
- Your will is not recorded before death; no one need know of it if that is your wish.
- The existence of the will does not affect your ability to sell or dispose of property. You may continue as though you had not written the document.

How is my estate distributed if I don't have a will?

If you die without a will, or "intestate," your assets and estate are divided according to New Jersey's intestate laws. The Surrogate will determine whether or not an administrator needs to be appointed depending on the size of the estate.

The laws of New Jersey provide that:

- If you die leaving a spouse and children, who are also the children of the spouse, the spouse receives 100% of the estate and no bond is required to be posted.
- If you die leaving spouse and children of a prior marriage, the spouse receives the first 25% (but not less than $50,000 and no more than $200,000) plus ½ of the balance of the estate. The children of the decedent share the remaining balance of
the estate. If a child predeceased the parent and that child produced grandchildren, the grandchildren share the balance that would have been their parent share.

- If you die leaving spouse and no children, but are survived by a parent(s) the spouse receives first 25% (but not less than $50,000, and no more than $200,000.) plus 3/4 of the balance. Surviving parent(s) receive all other assets of the estate. If you die leaving child or children but no spouse, children will take equally. Grandchildren will take their deceased parent's share.

- If you die leaving no spouse or children, parent(s) will take all. If no parent survives, brothers and sisters of decedent will take equally. If a sibling predeceased the decedent then the nieces and nephews will take their deceased parent's share.

- If you die leaving a spouse and children and the surviving spouse has children from a previous relationship, the spouse receives the first 25% (but no less than $50,000. and no more than $200,000.) children of the decedent share the remaining balance of the estate. The stepchildren do not share in the estate.

- If you die leaving a surviving spouse and only step-children, the surviving spouse receives 100% of the estate.

- If you die without a surviving spouse who had children from a previous relationship and you have no other descendents, such as parents, siblings, grandparents or other direct descendents, the step-children share 100% of the estate.

**What is the interplay between a will and life insurance?**

A life insurance policy is a contract between the policyholder and the company. The life insurance proceeds are paid according to the terms of each contract. It is important to emphasize that the proceeds of life insurance pass outside of the will. Therefore, the life insurance contract will determine who receives the proceeds instead of the terms of the will.

Life insurance should be payable specifically to a designated beneficiary. An alternate beneficiary or beneficiaries as well as a primary beneficiary should be named in each life insurance policy. An alternate beneficiary is important in case of simultaneous death of both the policyholder and the beneficiary, or if the beneficiary dies first. If there is no alternate beneficiary named, then the life insurance money passes to the estate. Consequently, these monies are subject to New Jersey inheritance tax and the executor's or administrator's commission.

**What are the types of taxes that can influence your will?**

There are three kinds of taxes that can influence the provisions of your will: inheritance, estate and gift. An inheritance by will, by law, by surviving joint owner, or from life insurance is not income and is not subject to income tax.
What is the New Jersey inheritance tax?
The inheritance tax is a tax payable by an heir or beneficiary for the right to acquire the property of a deceased person. The tax is determined by the amount inherited and by the relationship of the individual to the deceased.

I don't own much property. Can I just make a handwritten will?
No, this is a horrible idea. Handwritten, unwitnessed wills, are called "holographic" wills. It is very uncertain if a holographic will can be admitted to probate. To be valid, a holographic will must be written and signed in the handwriting of the person making the will.

A holographic will is better than nothing if it's valid in your state. However, a valid will signed in front of witnesses is much better to have. If a holographic will goes before a probate court, then the court may be unusually strict when it examines it to be sure it's legitimate. Moreover, many holographic wills can be written very ambiguously, and your estate could eventually be distributed to people that you did not want to receive your hard earned savings.

Can I use my will to name a guardian for my young children and to manage their property?
Yes. One of the best parts of having a will is that you can name a guardian to care for your young children if you should die. If both parents of a child die or become otherwise unable to care for a minor child, another adult who is called a guardian must step in. The guardian will be responsible for raising your children until they become legal adults.

You can choose that same guardian to manage property that you leave to your minor children or you can name someone different. You can name a "property guardian," a "custodian," or a "trustee" to manage the property. In most cases one guardian raises the children, and also manages any inheritance(s) left for the children.

Am I legally required to leave an inheritance to my spouse and children?
If a spouse dies, then the surviving spouse may elect to take a one-third share of their estate. This is called an elective share. Basically, a spouse can't be disinherit. The surviving spouse has a right to an elective share of the deceased's estate. The only way that a surviving spouse can be completely disinherited is if the parties execute a prenuptial agreement. In a prenuptial agreement both spouses can agree to waive any claims to an elective share of each other's respective estates.

Your elective estate not only includes property in your name alone, but it also includes most assets with beneficiary designations such as bank accounts, securities, IRA accounts, your interest in jointly held property, annuities, certain interests in trusts, the cash value of life insurance, and even property that you might transfer to a child during the one-year period preceding your death. In other words, you cannot easily ignore your spouse's rights to his or her elective share of your estate. Many clients ask me how the surviving spouse will be able to claim his or her share if the assets are left in trust for a child. The answer is that the surviving spouse can file a probate proceeding, and then force the child to return the assets to satisfy the elective share obligation.
Generally, it's perfectly legal to disinherit a child. There is no law that requires a parent to leave an inheritance for their child.

Can someone try to challenge my will after I die?

Very few wills are ever challenged in court. It is a very expensive and time-consuming process to challenge a will. When a will is subject to challenge, it is usually done so by a close relative who feels somehow cheated out of a share of the deceased person's property. The legal standard to invalidate a will is then it must be proven that the will suffers from a fatal flaw; a) the signature was forged; b) you weren't of sound mind when you made the will; c) or you were unduly influenced by someone.

For all practical purposes, a person must be pretty far gone before a Probate Court will rule that the testator lacked the capacity to make a valid will. The mere fact that the testator may have been forgetful or he had the inability to recognize friends doesn't, by itself incapacity. A will can also be declared invalid if a Probate Court determines that it was procured by "fraud" or "undue influence." This type of cause of action usually involves some evil heir manipulating a person of unsound mind to leave allo, or most, of his property to the evil heir. Will contests based on these grounds are very hard to prove, and are rarely filed.

What are the practical limitations of having a will?

Wills aren't the place to handle certain kinds of property or issues. Wills are a wonderful, simple, affordable way to handle many people's estate planning needs. However, in many scenario's much more estate planning must be used to properly serve the client. Here are some of the important limitations of a will;

- You can't use your will to leave property you hold in joint tenancy with someone else (or in "tenancy by the entirety" or "with right of survivorship" with your spouse). At your death, your share will automatically belong to the surviving co-owner. A will provision that leaves your share to another person would have no effect unless all of the co-owners died simultaneously.
- You can't use your will to leave the proceeds of a life insurance policy for which you've named a beneficiary.
- You can't use your will to leave money in a pension plan, individual retirement account (IRA), 401(k) plan, or other retirement plan. Instead, name the beneficiary on forms provided by the account administrator.
- You can't use your will to leave money in a payable-on-death bank account. If you want to name a different beneficiary, just fill out a simple form at the bank.

When do I need to change my will?

It is important to make sure your will reflects your current wishes and situation. Life constantly changes. Your will should always be tailored to your current family and financial situation. Here are some events that should encourage you toward making a new will and reviewing beneficiary designations that have made for insurance policies, bank accounts, and retirement accounts.
• You get married. You and your new spouse should create new wills when you get married. In New Jersey, your spouse is entitled to an elective 1/3 share of your estate after you die, unless you have a prenuptial agreement to the contrary.

• You are unmarried, but have a new partner. Without a will, such as a living trust, your partner will inherit nothing. To avoid this, you and your partner will probably want to make new wills. Different rules apply if you and your partner are registered domestic partners.

• You get divorced. A final judgment of divorce revokes any gift made by your will to your former spouse. Therefore, you should make a new will after a divorce.

• You have a new baby. You will want to make a new will to name a personal guardian for the little one. This is the person you want to raise your child in the unlikely event that both you and the other parent become available.

• You have new stepchildren. Unless you legally adopt stepchildren. They have no right to inherit from you in most situations. If you want to leave them a share of your property, then you should adjust your will.

• You acquire or dispose of substantial assets, such as a home. If you leave all of your property to one or more people, there is no need to change your will as what you own changes. But if you've made specific gifts of property that you no longer own, you'll want to avoid leaving the intended beneficiaries out in the cold. Likewise, if you obtain new property and you want to leave it to someone specific, you'll need to change your will to make your wishes clear.

Can I prevent my spouse from inheriting my property?
Possibly. A divorce operates as a revocation of any bequest made to your former spouse or any appointment of your former spouse as executor, but in all other respects the will is still effective. You can disinherit your spouse in your will. However, there certain laws that exist to protect a spouse if this should occur. New Jersey provides a surviving spouse with a right to take an elective share, which is up to one-third of certain assets. However, there are several conditions that must be satisfied before a spouse is entitled to receive an elective share. If you and your spouse executed a valid prenuptial agreement waiving the right to an elective share or if grounds for divorce exist at the time of your death, your spouse will not be entitled to an elective share.

Any property that you own jointly with a right of survivorship with your spouse, as well as any life insurance, IRAs, 401(k) plans and similar retirement plans for which you designate your spouse as the beneficiary, will pass to your spouse regardless of what your will says.

May I change my will?
Certainly. A will is not an irrevocable legal document. A will may be changed or revoked in its entirety prior to your death provided that you have the mental capacity to change or modify it. To do so, you must either create a new will or execute an amendment, which is known as a codicil. If you want to revoke a prior will, then you should do so by making an express written statement in your new will.
How much does it cost to make a will?
The cost will vary according to each person's individual needs. Unfortunately, many individuals obtain inadequate generic wills when they are looking for a bargain. I provide a basic will package for my customers. I charge a fee of $150 to prepare a basic will. I also charge $50 to prepare a power of attorney, and $50 for a living will. The price for preparing a will becomes more expensive if the distribution plan is more complex, and if any trusts are incorporated into the will. Mr. Sliwinski, Esq. prides himself for preparing all types of wills and other estate plans for an affordable price.

Can a will save me money in the long run?
Absolutely. A will can eliminate the requirement of obtaining a bond for your estate. Even for a modest estate the cost of a bond is at least $1,000 per year. Additionally, for a larger estates, a properly drafted will can often reduce federal estate taxes and New Jersey inheritance taxes by establishing trusts and providing directions as to how long a beneficiary must survive you in order to inherit under your will.

Can I prepare my own will?
Yes, however many self-made wills are deficient and they can't be admitted to probate. The bottom line is that many internet company prepared wills are garbage and they are legally insufficient. Moreover, many of the fill in the blank form wills are also garbage and they can't be admitted to probate. Finally, a self-prepared hand written "holographic" wills can only be admitted to probate after a costly time consuming formal Probate Court hearing.

What effect does a will have on real estate that is owned jointly by a husband and a wife?
Any real estate that is owned jointly by a husband and wife in the form of ownership legally known as "tenancy by the entirety" is not controlled by the will of the spouse who dies first. Therefore, the surviving spouse will become the sole owner of the home if he has rights of survivorship, regardless of what the will may provide.

Do all states have the same probate laws?
No, although New Jersey is one of several states to enact the Uniform Probate Code, most states have their own probate laws. Therefore, is a good idea to have your will reviewed when you move to another state.

Where is my will filed after I die?
When a person dies leaving assets in his name alone or in joint names with another person other than a spouse, it will be necessary to present the will to the County Surrogate for probate. The will is presented to the County Surrogate in the county wherein the decedent lived at the time of death.

The executor will need to present the original will, a certified copy of the death certificate, and a list of names and addresses of the closest next of kin to the County Surrogate. The legal papers are then prepared by the court and signed by the executor. The legal review of the documents by the surrogate is the probate of the will. If all of the
requirements are met, the will is then admitted to probate and the certificates are issued to
the executor. These certificates allow the executor to execute documents formerly done
by the decedent such as transfer automobiles, bank accounts, investment accounts, etc.
The original will is retained and filed by the County Surrogate. The will becomes a public
record and is listed in the general index.