Theodore Sliwinski, Esq.
East Brunswick, NJ

DYING WITHOUT A WILL

What happens if you die without a will?

If you die in New Jersey without having a will, then you have died intestate. This is a legal term that means that you have no will to probate once you are dead. Therefore, since you don't have a will, your estate is distributed according to New Jersey's law of intestacy.

It is important to emphasize that whether you die with or without a will not all of your hard earned assets must go through the administration process. Many assets that you acquire during your life pass outside of the will. These assets include;

- A home that is in the joint names of you and your spouse with the right of survivorship
- A bank account that is in the joint names of you and another with the right of survivorship, or in your name and payable to another upon your death
- A life insurance policy that names another person as a beneficiary
- A company pension plan or a IRA or 401K plan

In all of the above type of assets, the beneficiary or the survivor takes ownership of the entire asset upon your death. Thus, these assets do not have to go through the administration process.

If the beneficiary or the survivor in any of the above types of scenarios dies before you do, and there is not successor beneficiary or survivor named, then the beneficiary will be your estate. Thus, the property would not pass outside of your estate. Thereafter, the assets would be distributed according to the New Jersey laws of intestacy.

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.

- If you die leaving a spouse and children of the same marriage, the spouse will inherit the entire estate. (i.e., no stepchildren or children of a prior union)
- If you die leaving a spouse and children of a prior union, the spouse will inherit the first 25% of the estate, but not less than $50,000 nor more than $200,000, plus one-half of any balance of the estate. Your children take the balance equally. Grandchildren will take the share of their deceased parent.
- If you die leaving a spouse, child or children and a stepchild, or stepchildren, the spouse will inherit the first 25% of the estate, but not less than $50,000 nor more than $200,000, plus one-half of any balance of the estate. Your children take the balance of the estate equally. Grandchildren will take the share of their deceased parent.

- If you die leaving a spouse and no children, but are survived by parents, the spouse will inherit the first 25% of the estate, but not less than $50,000 nor more than $200,000 plus three-fourths of any balance of the estate. Your parents take the balance equally.
- If you die leaving a child or children but no spouse, children will inherit equally. Grandchildren will take the share of their deceased parent.
- If you die leaving no spouse, children or grandchildren, your parents take all. If no parent survives, your brothers and sisters will take equally. Nieces and nephews will take their deceased parent's share.
- 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

What is the survivorship 120 hour rule?

In this world of terrorism the issue of surviving your spouse can be a critical issue in the area of probate law. Basically, the 120-hour rule provides that any person who is entitled to inherit all of part of you restate when you die without a will must survive you by 120 hours or 5 days. If such person does not, then he or she shall be deemed to have died before you did.

If the times of the death of you and your heir or spouse can't be determined by clear and convincing evidence, then your heir is deemed not to have survived for the 120 hours.

What are some key additional points to take into consideration if I should die without a will?

- An individual that is conceived in gestation (conceived but unborn) at a particular time who lives at least 120 hours (5) days after birth is treated as living at that particular time.
- A lawfully adopted child or adult inherits the same as if he or she were a natural child of the decedent.
- A child born out of wedlock is the child of its natural parents regardless of the marital status.

What is the legal process to distribute my assets to my heirs if I die without a will?

The process to distribute your assets if you should die without will is called an administration. This is a legal procedure that takes place from the time of your death until your estate and assets are finally distributed to your heirs as delineated in New Jersey's laws of intestacy.

The administration takes place in the County in which you have died as a resident. The Surrogate Court has jurisdiction over your administration. The Surrogate Court deals with any and all estate administration issues. When you die without a will, the court will appoint an administrator. The administrator collects and preserves assets, pays off your debts and your taxes, and finds your heirs and distributes your estate to them.

Is an administration always required?

No, if your estate is insubstantial and if you leave a surviving spouse, and if your estate does not exceed $20,000, then your spouse shall be entitled to receive all of your property without an administration. If you leave no surviving spouse, and the total value of your property does not exceed $10,000, then your hears also entitled to receive all of your property without going through the administration process.

The procedure to avoid an administration is called an Affidavit in Lieu of an Administration. This form must be signed by the surviving spouse and heir, and it must recite that the value of the estate is quite insubstantial.

What are Letters of Administration?

Letters of Administration are legal documents that are issued by the County Surrogate to the administrator of your estate. They authorize and give the administrator the authority to handle your estate. Certified copies of the Letters of Administration are then used with other documents to open up an estate bank account and to sell or transfer any of the decedent's assets.

Who is granted the Letters of Administration?

The Letters of Administration are granted to your surviving spouse if you have one. If you don't have a surviving spouse, then your heirs will have to apply to be the administrator.

If none of your heirs will accept administration, then the Letters of Administration will be granted to any person who accepts the job.

If you die leaving no spouse or heirs or if your heirs do not claim the Letters of Administration within 40 days after your death, the Letters of Administration may be granted to anyone who applies and his is fit and able.

How are the Letters of Administration granted?

After ten days have passed from the date of death, the person who is seeking to administer the estate must go to the County Surrogate's office and apply for administration. The application must bring a copy of the death certificate, fill out intake forms, and pay a filing fee of approximately $200.

Your spouse is the first person who is entitled to be named as the administrator. No consent or renunciation forms must be obtained from the other heirs.

If the person seeking to administer the estate is not the spouse**,** then he or she must obtain the consent or the renunciations from all of the other heirs. This can be a very difficult process, and it can slow down the administration process to a halt. The applicant must also inform the County Surrogate what he or she believes is the value of the estate.

The County Surrogate will also require that you post a bond for the estate. The bond will serve as insurance that the administrator won't steal the assets of the estate.

How much does the administration process cost?

The filing fees for an administration application is typically around $200. The cost to obtain a bond can be quite expensive. It is important to emphasize that the premium to obtain a bond is a recurring expense, and it will have to be paid for each year that the estate is open. The cost to obtain a bond increases with the size of the estate.

What are roles and the duties of the administrator?

The administrator is essentially a referee of the estate. His job is to settle and distribute the estate according to the laws of New Jersey. Moreover, the administrator has the duty to preserve the assets of the estates. The administrator must pay all of the debts of the estate. The administrator should also try to resolve any disputes amongst the heirs so as to waste monies on legal fees.

In summary, the administrator has the following authority:

- To invest and reinvest the assets of the estate
- To keep all insurance policies in force
- To manage and sell any real property of the estate
- To settle all claims against the estate
- To pay any reasonable debts against the estate
- To file any tax returns for the estate
- To file any inheritance tax returns
- To continue any of the decedent's business