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## **NJ PROBATE FAQs**

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### **What To Do First**

#### **What should I do before I schedule my appointment with the County Surrogate's Office?**

There are several steps that you should take before you schedule your appointment with the County Surrogate. These first steps are as follows:

- Contact Social Security: (1-800-772-1213), if the decedent was a recipient (Funeral Director will do this, but if you have further questions or receive a check and are unsure how to proceed)
- Locate the decedent's will: This may mean contacting family members, the decedent's attorney, or looking through the home or safe deposit box of the decedent
- Give the original will to the person named as the Executor
- If the decedent was a veteran, you may wish to check on veteran's benefits (1-800-827-1000)
- Obtain from the Funeral Director one or more death certificates with a seal

**Where do I obtain a death certificate if some time has passed?**

One can be obtained in the local municipal offices where the person passed away.

**What do I do with a vehicle registered only in the decedent's name?**

A vehicle in the decedent's name may be operated for 30 days after the date of death by immediate family or any licensed driver authorized by the decedent's family. Thereafter, the title must be transferred by the executor or administrator. One must be deemed executor or administrator by the Surrogate prior to the transfer.

**How do I get the original will out of the safe deposit box?**

If you have a copy of the will naming you as the executor, a bank will usually allow you to enter the box in the company of a bank officer to remove the will, deed to cemetery plot and certain life insurance policies before probate.

## **If You Are Named Executor**

### **What should I do if I am named the executor of an estate?**

- Locate and protect any assets;
- Provide adequate security for the decedent's home if it is vacant to protect both the real and personal property; and
- Locate any bank books and accounts.

### **What documents do I need to probate the will?**

- The original will
- A death certificate with a seal
- Addresses of all next of kin and all persons named in the will
- A blank check or cash for fees, which will vary with each estate

**\*Note:** Although the will cannot be probated until 10 full days after the date of death, application can be made at anytime earlier, if it is more convenient. In most cases, the process will only take about 20 minutes to apply for probate.

The Surrogate's Court will issue the executor Surrogate's Certificate's (Letters Testamentary) which are used to transfer the assets of the decedent's estate. They are the executor's authority to act for the estate.

## **If There Is No Will**

### **My husband died and he left no will. What is the next step that I should take?**

The closest living relative of the decedent can apply to the Surrogate for appointment as administrator of the estate. This right to apply, to be appointed by law, is defined in the following order:

- Spouse
- Children
- Parents
- Brothers and Sisters
- Nearest next of kin

The person "first entitled" may renounce the right to serve (This does not act to renounce the right of inheritance).

When there is more than one person of equal right-such as brothers and sisters, or more than one child-then all except one may renounce, except in certain circumstances.

Administration, in most cases, will require a surety bond to protect the creditors and beneficiaries of the estate

### **How is an administrator appointed when there is no will?**

When there is no will, an administrator or personal representative is appointed by the Surrogate's Court. The surviving spouse has the first right to apply for the position of administrator; however, any heir of the decedent may be appointed. When one of several heirs seeks to be appointed administrator, all other heirs must renounce their right to be appointed administrator. In most cases, a surety bond must be furnished to cover the value of the real and personal property in the estate.

### **What will I need to apply for an administration?**

- A death certificate with a seal
- An estimate of gross value of the estate.
- A list of estate debts.
- Names and addresses of the next of kin
- A blank check or cash for fees, which will vary for each estate

The Surrogate's Court will issue Surrogate's Certificate's, that are used to transfer assets.

### **What are the first steps that I should take to handle the administration process?**

- Contact Social Security.
- Locate the decedent's will.
- If the decedent was a veteran, investigate veteran's benefits.
- Obtain one or more original death certificates, with a seal, from the funeral director.

- Secure all estate assets, especially the house and valuables. If there are multiple heirs, an inventory may be prudent.
- Start a checklist of estate debts, such as medical expenses, charge accounts, utility bills, etc.
- Start a checklist of estate assets, such as bank accounts, stocks, credit unions, etc.
- Arrange for pickup or forwarding of mail.

### **What is the purpose of having a surety bond?**

Bonds are required in all administrations. The bond protects the creditors, beneficiaries and heirs of an estate. A bond must continue in effect until the estate is settled and a Release of Surety is issued by the Surrogate. Bond premiums can be very expensive and is an expense of the estate.

## **The Executor's Duties**

### **Do I have to serve as executor?**

No. An executor can renounce his appointment and the alternate executor, if any, steps into his place. If there is no alternate executor named in the will, another family member following guidelines of intestate succession distribution is next entitled to serve.

### **What information should I collect?**

- The decedent's personal representative should make a list of all decedent's next of kin, degree of relationship, address and age.
- Will and final instruction documents
- Death certificate
- Checking/Savings/CD acct. numbers & banks
- Stocks, bonds, mutual funds, other securities
- Pension and annuity records
- Insurance policies
- Union/company health and other benefits
- Real estate deeds, related records
- Income tax records
- Vehicle titles
- Installment loans
- Birth/baptismal certificates, adoptions documents
- Social security number
- Marriage, divorce, prenuptial documents
- Military and civil service documents

### **Where can I obtain more death certificates?**

To obtain a certified copy of a death certificate go to the municipal building of the town where the person died.

### **What are the basic obligations of the Executor or Administrator?**

The Executor or Administrator is, in general, required to collect and safeguard the assets of the estate, pay the debts of the decedent and as well as any taxes due, to make distribution to the devisees under the Will or heirs if the decedent had no Will, and if required, to provide an accounting of the administration for the estate.

### **Is it necessary to notice all beneficiaries and next of kin that the Will was probated?**

Yes. Within 60 days of the date of probate a notice in writing that the Will has been probated, the place of and date of probate, the name and address of the personal representative and a statement that a copy of the Will shall be furnished upon request.

**Where does the Executor/Administrator obtain the funds to pay debts?**

The Executor/Administrator will pay the debt out of the estate assets. Generally, the Executor/Administrator should open an estate checking account which can be used to receive and disburse funds.

**Do I have to pay all claims?**

If claims are made, the Executor does not have to automatically accept the claims but can dispute them and has three months to make any decisions.

**Am I entitled to compensation for acting as the Executor or Administrator?**

Generally, an Executor or Administrator is entitled to a commission of 5% on the estate assets and 6% on the income generated during the period of administration.

**How do I get a Will out of a safe deposit box?**

The Executor is permitted to remove the original Will, as well as the deed to a cemetery plot and certain life insurance policies from the decedent's safe deposit box before probate in the presence of a bank officer.

**What if the Will is not properly executed?**

The Surrogate will advise the personal representative as to the proper procedure in order to allow the Will to be admitted to probate. This procedure normally involves a formal hearing before a Judge of the Superior Court.

**How is a safe deposit box handled?**

The personal representative is permitted to remove the original Will and the deed to a cemetery plot from the safe deposit box. A representative from the New Jersey Inheritance Tax Bureau is no longer required to be present. All other items must remain in the box until a Surrogate's Certificate is presented or if jointly owned then the joint owner can access and remove content.

**How will the personal representative obtain the funds to pay debts?**

Normally, by opening and maintaining an Estate checking account to pay bills and debts of the Estate. Assets in the decedent's name alone are usually liquidated to fund the checking account. The existing accounts can be accessed up to half of their value pending the tax waivers being received.

**Must I send a copy of the will to beneficiaries and next of kin?**

The executor has 60 days in which to mail all beneficiaries and next of kin a copy of the will, along with a notice giving the specific date and place it was entered into probate. Proof of mailing should be filed with the Surrogate within 10 days of mailing. The cost to file proof is \$5.00 per page. A single letter with multiple addresses is acceptable. If the will contains any charitable bequest, notice must also be given to the Attorney General of New Jersey.

## **Where does the money come from to pay the debts?**

The personal representative may, in most cases, withdraw up to one-half of the funds in the decedent's New Jersey bank accounts. He should open an estate checking account which can be used to receive and disburse funds.

## **What are the specific duties of the executor?**

- Collect assets and information
  - Locate Will, death certificate (may need birth and marriage certificate, too) and file and/or probate in Surrogate's Court.
  - Locate safe deposit box and key.
  - Obtain life insurance claim forms
  - Obtain doctor's supporting statement for insurance claim.
  - Obtain social security burial allowance if applicable.
  - Check on veteran's benefits, social security benefits, pension benefits.
  - Locate bank accounts; have them transferred to estate account.
  - Collect all stocks and bonds.
  - Locate names and addresses of all heirs, legatees, devisees and next of kin.
  - Notify all interested parties of the probate within 60 days: advising of the name & address of the Executor, the place & date of the probate, & that a copy of the will be furnished upon request. If there are charitable bequests, notice must be given to the Attorney General of NJ. A proof of mailing is filed with the Surrogate's Court.
  - Assemble deeds, abstracts, lease contracts, insurance policies for each parcel of real estate.
  - Investigate the status of any business interest owned.
  - Locate and inventory automobiles, furniture, jewelry and other possessions.
- Determine debts and other claims against the estate
  - Determine current bills owed, doctor, hospital, rent, utilities, etc. and arrange to pay.
  - Check on decedent's charge accounts - make arrangements for continuing services and for obtaining credit or discontinuing services.
  - Find out what debts exist - mortgage, life insurance loan, bank loan, automobile loan.
  - To determine if the beneficiary is a child support judgment debtor, obtain an identification certification from each beneficiary, and order a certified child support judgment search from a private judgment search company.
  - Publish legal notice about claims against the estate in newspaper
  - Carefully examine all claims as to their validity, amount and correctness.
  - Oppose (if necessary) all incorrect or invalid claims.
  - Obtain vouchers for every bill and claim paid. Keep books and records of all items.
- Manage the estate
  - Set up bookkeeping records and / or an estate account.
  - Re-register stocks, bonds; arrange for collection of dividends and interest.

- Inventory all items of property and arrange for their appraisal.
- Examine all real estate as to condition, adequacy of insurance, status of taxes and assessments.
- Collects rents, make reports, obtain tenants, maintain necessary insurance in force, arrange for electricity, fuel, telephone, etc.
- Review all investments as to safety and quality; make necessary changes as prudence indicates.
- Examine books and records of any business interest. Have necessary audits and appraisals made.
- Supervise the family owned business.
- Request allowance from court for support of deceased's family.
- Determine and pay all taxes
  - Compute value of estate and probable state and federal taxes.
  - Select valuation date for federal estate tax.
  - Determine whether administrative expenses should be charged against income taxes or estate taxes.
  - Prepare estate's income tax return also last income tax return of decedent.
  - Determine charitable and other deductions.
  - Determine how funds will be raised to pay taxes.
  - Prepare inheritance tax returns.
  - Prepare federal inheritance tax returns.
  - Pay personal property or real estate taxes, if any.
- Distribute the estate
  - Determine who is entitled to share in the estate.
  - Sell assets to raise cash for specific legacies.
  - Determine how assets will be distributed, which legatee and devisee is to get each item of property.
  - Pay all final costs.(Including any child support obligation).
  - Arrange for transfer and re-register of securities.
  - Prepare detailed informal or formal account for court.
  - Obtain release and refunding bonds from all beneficiaries and file with Surrogate's Court.

## **The Probate Process**

### **What is Probate?**

Probate is designed to create a "final accounting" upon death. It is the legal process of "proving up" a Will, or verifying that a Will is valid, takes place in one of two instances. First, if a person dies leaving behind a Will, or second, if the deceased has died intestate, that is, has not left behind a Will or estate plan of any type or the Will cannot be found.

### **What is Probate Court?**

Probate begins and ends with the special Probate Court set up in each state to handle estate issues. All actions taken regarding the estate are accountable to this court, and must be noted and reported regularly. This court is staffed by special judges qualified to oversee estate resolution issues.

### **How do I begin the probate procedure?**

The executor, executrix, or personal representative can be appointed and the will admitted to probate in most cases by going to the Surrogate's Court with the original will, certified death certificate, and, if the will is not self-proven, at least one of the witnesses who signed the will must prove the signature of the will.

### **Is the probate process expensive?**

No. While fees are set by the New Jersey legislature, most probates cost less than \$200.

### **Are Wills registered?**

Wills are not registered with the Surrogate Court until after the death of the Testator or Testatrix. However, you can register your Will with the Secretary of State's Office. [www.state.nj.us/state](http://www.state.nj.us/state) or (609) 984-1900.

### **Does the Probate process take a long time?**

Depending on the complexity of the estate and the thoroughness with which accounting has been carried out before death, probate can either be a relatively simple task or a daunting one. Be aware that no matter the situation, probate may be a lengthy process often taking months or possibly years to play out, and one which may take a considerable amount of an executor's time.

To summarize the process, probate can be broken into six basic steps:

1. Validation of the Will
2. Appoint executor
3. Inventory estate
4. Pay claims against the estate
5. Pay estate taxes
6. Distribute remaining assets

Each of these steps involve legal documentation and validation, and more importantly, proper accounting each step of the way.

**What happens if the will is not properly executed?**

The Surrogate will advise the personal representative as to the proper procedure in order to allow the will to be admitted to probate. This procedure normally involves a formal hearing before a Judge of the Superior Court.

**How many Surrogate's Certificates ("Shorts") will I need?**

A list of all the assets of the estate should also be prepared to help determine the number of Surrogate's Certificates that must be issued by the probate clerk in the Surrogate's Office.

A list of the Estate assets should be prepared to show the number of transfers that will need to take place. That number should reflect the required number of certificates. Additional certificates can always be requested from the Surrogate's office. Check with the particular bank or institution as to how many certificates will be necessary.

**When is the will admitted to probate?**

After all the proper forms are filed with the probate clerk, the clerk will prepare a judgment which admits the will to probate. The Surrogate then signs the judgment and issues "Letters Testamentary."

**What are Surrogate's Certificates used for?**

Surrogate's Certificates act as evidence of the authority of the personal representative (Executor, Administrator) to act. These certificates are necessary to accomplish certain tasks such as transferring stocks, closing bank accounts, etc.

**Is it necessary to send copies of the will to the beneficiaries and next of kin?**

From the time the will is probated, the Executor has 60 days to mail all beneficiaries and next of kin a copy of the will, along with a notice giving the specific date and place the will was entered into probate.

**Basically, what is the Executor/Administrator required to do?**

The Executor or Administrator is, in general, required to collect and safeguard all of the assets of the estate and eventually to pay all the debts of the decedent, as well as any taxes due, and be able to provide an accounting of his actions to the beneficiaries or heirs. You may wish to call your attorney to give you further advice as to specific duties and obligations.

**Where does the Executor/Administrator obtain the funds to pay debts?**

The executor may, in most cases, withdraw up to one-half of the funds in the decedent's New Jersey bank accounts. Generally, the Executor should open an estate checking accounts which can be used to receive and disburse funds.

## **The Payment of any Claims of the Estate**

### **Do I have to pay all claims presented to me?**

No, the personal representative does not have to automatically accept or pay claims, but can dispute them and has 3 months to make any decisions. If claims are made, the Executor does not have to automatically accept the claims but can dispute them and has three months to make any decisions.

### **How do I close an estate and prove legacies were paid?**

Prior to distribution, each beneficiary shall execute a refunding bond and release. Upon receipt of the executed document, the personal representative issues payment. The original refunding bonds and releases are filed with the Surrogate at a cost of \$10 for a 2 page document. When all refunding bonds for the estate are filed, the estate is closed.

### **How can I protect myself from creditors after the estate is settled?**

It may be advisable for the Executor to obtain an order requiring public notice to creditors of the decedent requiring them to present their claims within six months from the time of the order. This notice is published by the Surrogate. The Executor may then act in reliance upon the belief that all creditors have presented claims within that period.

### **Where does the executor obtain the funds to pay the debts?**

Normally, the representative of the Estate will open and maintain an Estate checking account to pay bills and debts of the Estate. Assets in the decedent's name alone are usually liquidated and placed into the checking account. Remember that existing accounts are allowed to be accessed up to one-half of their value pending the tax waivers being received.

## **Stopping the Probate of an Estate**

### **How can I stop the probate of an estate?**

A caveat to prevent a will from being probated may be filed with the Surrogate at any time before the judgment of probate is entered. If a caveat is filed, all future estate actions take place in the Superior Court.

The persons, or organizations that have legal standing to contest a will are the beneficiaries in the latest, or immediately preceding will, the intestate heirs-at-law and possibly creditors.

## **Joint Bank Accounts**

### **How do I handle joint bank accounts or certificates of deposit?**

Certain bank accounts and certificates may be owned with rights of survivorship, which means that upon the death of one party to the account, the surviving party (or parties) become the sole owner (owners). If the decedent maintained such an account, the survivor will be able to withdraw one-half of the funds in the account by giving the bank a death Certificate and without the need to provide anything from the Surrogate. The other half will not be released until a tax waiver is issued by the New Jersey transfer Inheritance Tax Bureau, normally after the tax is paid and the return is filed.

Under the new inheritance tax laws governing estates from spouse to spouse, when the bank account is co-owned, funds may be transferred with a copy of the death certificate, without any type of certificate from the surrogate's office. The spouse will sign an L-8 tax waiver, usually completed by the financial institute. If the account is in the name of the decedent only, the bank will require a certificate from the surrogate in addition to the L-8.

When the bank account is co-owned by any other Class A, (parents, grandparents, children, grandchildren, adopted children, or stepchildren), the procedure is the same as spouse to spouse, except the co-owner will sign an L-8 tax waiver. If the account is in the name of the decedent only, the bank will require a certification from the surrogate in addition to the L-8.

Transfer of real estate to a Class A beneficiary: To obtain a real estate tax waiver, Form L-9 is used in estates of resident descendents only, and filed directly with the Division of Taxation. The waiver, when received is filed in the County Clerk's Office.

### **How does the surviving spouse access the joint bank account or certificates of deposit?**

Certain bank accounts or certificates of deposits may be owned with rights of survivorship which means that upon the death of one party to the account, the surviving party becomes the sole owner. The surviving spouse to the account can fill out an affidavit of waiver or L-8 form at the bank to access the funds.

## **Joint Accounts in Probate**

### **How are joint accounts handled in the probate process?**

If the bank accounts or CD's are owned with right of survivorship then that means that upon the death of one party to the account, the survivor becomes the sole owner. The survivor to the account can fill out an affidavit of waiver or L-8 form at the bank and access the funds.

## **The Probate of Small Estates**

### **Is all the paperwork necessary even on small estates?**

There is a procedure whereby the assets of small estates can be transferred to the surviving spouse without the necessity of administration. The spouse files an affidavit stating, among other things, that the decedents had no will and that all of the real and personal assets of the decedent do not exceed \$10,000.

### **How about small estates with no surviving spouse?**

A similar procedure is used when the decedent dies without a will and leaves to surviving spouse but does leave next of kin. In such a case, if the total value of the real and personal property does not exceed \$5,000, one of the next of kin with the consent of the others may file an affidavit in lieu of administration.

### **What is the probate procedure in a small Estate with no surviving spouse?**

If a person dies without a Will and is survived by a spouse, and the total value of the real and personal property does not exceed \$20,000, the spouse may obtain an Affidavit of Surviving Spouse in lieu of filing a formal Administration

## **Safe Deposit Boxes**

### **What is done with a safe deposit box?**

The personal representative is permitted to remove the original Will and deeds to a cemetery plot from a safety deposit box. There is no longer a requirement to have a representative from the New Jersey Inheritance Tax Bureau present. Any other items present in the box can be removed only on the presentation of a Surrogate's certificate or if it is jointly owned then the joint owner can access and remove the items

### **What do I do about a safe deposit box in the name of the decedent?**

Individuals generally keep their will in their safe deposit box. The personal representative is permitted to remove the original will, as well as a deed to a cemetery plot and certain life insurance policies from the decedent's safe deposit box before probate. The executor should contact the banking institution where the safe deposit box is located to determine their requirements to release the balance of the contents of the box.

## **Surety Bonds**

### **What is the purpose of a surety bond and why is it required?**

The purpose of the bond is to protect the heirs and creditors of the estate. Pursuant to New Jersey statutes, N.J.S.A . 3B:15-1, the order of appointment includes a requirement that the Administrator post bond.

### **Why do I need to post a bond if someone dies without a Will?**

The State of New Jersey determined that a bond must be posted representing the full value of the real and personal property in the Estate. The bond is like an insurance policy on the Estate to ensure that the assets are distributed properly. The Surrogate does not have the right or discretion to waive the requirement.

### **How do I get released from the surety bond?**

A Refunding Bond and Release must be filled out by every beneficiary of the estate, including the Executor/Administrator, once all the debt has been paid and the money has been distributed. This form will release the Executor/Administrator from all claims and demands whatsoever on respect to the estate of the deceased. The Surrogate's office files the original Refunding Bond and Release form for a filing fee of \$10 and the bonding agency gets a file stamped copy.

## **Executor Commissions**

### **Am I entitled to compensation for acting as Executor or Administrator?**

An Executor or Administrator is entitled to corpus commissions of 5% of the first \$200,000 of estate assets subject to administration, 3 1/2% on the excess over \$200,000 up to \$1,000,000 and 2% or such other percentage as the court may determine on the excess over \$1,000,000.

If there is more than one executor or administrator, an additional 1% corpus commission may be allowed by the court for each additional executor or administrator.

In addition to corpus commissions, an Executor or Administrator is entitled to income commissions of 6% of income earned on estate corpus during the administration of the estate.

## **Accountings**

### **What is a formal accounting?**

This is a complex breakdown of all assets, disbursements, distributions, fees and commissions generally prepared by an attorney.

### **Do I need to file a formal accounting if I represent an estate?**

The answer is no as most Estates in New Jersey are settled without formal court proceedings. A representative may, however, file an informal accounting with the court or obtain a written agreement/consent form from all of the beneficiaries to the Estate that dispenses with the accounting, approves the actions of the representative and provides for the method or manner of distribution.

Most estates are settled without having formal court accountings. The personal representative should prepare an accounting of the estate assets and disbursements and proposed distribution, which accounting may be proved informally by each beneficiary/heir acknowledging approval of same.

In New Jersey, most estates are settled without having formal court accountings. Instead, the Executor/Administrator obtains the written agreement and consent of all the beneficiaries dispensing with a formal accounting, approving the actions of the executor/Administrator, the amount and manner of distribution and releasing the Executor/Administrator from further liability.

### **If a formal accounting is made, can anyone take exception to it?**

If the Executor/Administrator, any interested party or the Court wants a formal judicial accounting, it will consist of a detailed summary of the transactions incident to the administration of the estate. Any party who has an interest in the account and who disagrees with the account can take "exception" to the account.

## **The Payment of Taxes**

### **How soon must state inheritance taxes be paid?**

New Jersey inheritance tax returns must be filed and the tax paid within eight months after the date of death to avoid interest. While an extension to file may be granted, the tax must still be paid initially.

### **Are unpaid inheritance taxes a lien on real and personal property?**

The answer is yes. In order to sell real estate, tax waivers will be necessary from the New Jersey Inheritance Tax Bureau. The waiver is filed with the County Clerk in the county where the land is located. Land held by husband and wife as tenants by the entirety need not be reported and may be transferred without a waiver. Personal property such as bank accounts that do not meet reported.

### **Does New Jersey have an inheritance tax?**

In estates of decedents dying on or after July 1, 1988, only beneficiaries in Classes "C" and "D" are subject to inheritance tax. Currently, the law imposes a graduated inheritance tax ranging from 11% to 16% on the real or personal property with a value of \$500 or more to certain beneficiaries as listed below:

- Class "A" - father, mother, grandparent, husband, wife, child or children of decedent, adopted child or children, issue of any child or legally adopted child of a decedent, mutually acknowledged child and stepchild.
- Class "B" - eliminated by statute effective July 1, 1963.
- Class "C" - brother or sister of decedent, wife or widow of a son decedent, or husband or widower of a daughter of decedent
- Class "D" - every other transferee, distributee or beneficiary.
- Class "E" - includes transfers for public or charitable purposes to the State of New Jersey or any of its political subdivisions, an educational institution, church, hospital, orphan asylum, public library, and certain other nonprofit agencies, etc.

### **When are taxes due?**

An inheritance tax return must be filed on the transfer of real or personal property within 8 months after the death of either:

- A resident decedent for the transfer of real or tangible personal property located in New Jersey or intangible personal property wherever situated, or
- A nonresident decedent for the transfer of real or tangible personal property located in New Jersey. No tax is imposed on nonresident decedents for intangible personal property wherever located.
- A tax return must be filed whenever any tax is due. The tax is a lien on all property for 15 years, unless paid sooner or secured by acceptable bond. Interest on unpaid tax will accrue at the rate of 10% a year.

### **Do I need professional help with estate taxes?**

You should consult an accountant or tax attorney about all tax obligations of an estate.

## **Objections to the Probate Process**

### **Can the probate process be stopped in the Surrogate's office?**

The answer is yes; before a probate is begun or completed, a caveat can be filed that restricts or prohibits the Surrogate from taking any other action on the probate. The process would then have to proceed in the Superior Court by Verified Complaint and Order to Show Cause for a hearing and determination.

### **How can the probate process be stopped in the Surrogate's office?**

By filing a caveat before the probate is begun or completed that will restrict or prohibit the Surrogate from taking any other action on the probate. To proceed, the process would have to be taken to Superior Court by Verified Complaint and Order to Show Cause for a hearing and determination.

### **Can I challenge a probate after it is completed?**

Yes. New Jersey Court rules set forth the time frame in which an application can be made to set aside a probate. It is 4 months from the date of probate if you live in the State of New Jersey and 6 months if you live out of the State of New Jersey. New Jersey Court rules set forth the time frame in which an application can be made to set aside a probate. The time differs on the residency of the person making the application. The complaint must be made in the Superior Court, Chancery

## **The Distribution of the Estate**

### **How do I prove that distribution or legacies were paid?**

A Release and Refunding Bond form is utilized and signed by each beneficiary to the Estate. They are then filed with the Surrogate's Office. If there was no Will, the bond posted will only be cancelled when the Release and Refunding Bonds are filed for all of the beneficiaries.

### **What will I use Surrogate Certificates for?**

To show evidence of the authority of the representative to act. They will be necessary to transfer real estate, closing bank accounts, accessing stocks, etc.

### **As an executor am I protected against creditors of the Estate?**

Representatives of an Estate can obtain a Notice or Rule to Bar Creditors. It requires creditors to come forward and pursue their claims within six months of the date of the Order. If claims are not presented within the six months, the representative will not be liable to the creditors with respect to any assets that may have been delivered or paid in satisfaction of lawful claims or shares due beneficiaries of the Estate before the Claim is presented.

## **Why Everyone Should Make a Will**

### **Why is it important to have a will?**

- Everyone owns property - real or personal - and has an estate. When no will exists, real and personal property is not distributed according to the decedent's wishes. Rather, it is distributed according to the statutes of New Jersey.
- A will saves your heirs time and money, and you can plan the orderly transfer of your property. You decide to whom, when and in what amounts your assets should be distributed. You select the executor who is responsible for the payment of your debts and disposition of your estate.
- A will can be prepared by an attorney who specializes in will drafting or estate planning and who can guide you to the best decisions after obtaining facts only you can give.
- You don't need to itemize your assets, nor do you need to state disposition by item. It is not mandatory to make bequests only to family members. Friends or charities may also be beneficiaries of an estate. A will does not affect your ability to sell or dispose of property.
- A will must be written, signed by the testator and witnessed by a least two persons. The original copy is the legal document and must be signed.
- Keep your will in a safe place, but let the executor know where it can be found. Keep your will current with changes in your life such as marriage, birth of a child, death of a beneficiary.
- You can change your will at anytime by having a codicil prepared. Do not change your will by marking it in any way. Marking your will could destroy it as a legal document and may require a court hearing to probate the will.

## **Administration FAQs**

### **What happens when there is no will?**

An administrator or personal representative is appointed by the Surrogate's Court. The surviving spouse has the first right to apply as personal representative, however any heir of the decedent may be appointed. When other heirs seek appointment, all heirs of equal standing are asked to renounce their right to appointment.

If the decedent dies without a will (intestate), there is a statute which determines to whom the decedent's property is to be distributed according to the degree of family relationship.

Without a will, how much is the surviving spouse entitled to?

In New Jersey, in typical cases where there is a surviving spouse and children (all of whom are also the children of the surviving spouse), the spouse is entitled to the first \$50,000 of the estate and any amount of \$50,000 is divided equally between the children and the spouse.

If there are surviving children, one or more of whom are not children of the surviving spouse, the spouse receives one-half of the intestate estate, the children receive one-half divided among them.

The process of managing and distributing the assets of the estate of a decedent who has died intestate (without a will).

### **What should I do first if I am administering an estate?**

- Contact Social Security
- If the decedent was a veteran, investigate veteran's benefits
- Obtain one or more original death certificates, with a seal, from the funeral director.
- Secure all estate assets, especially the house and valuables. If there are multiple heirs, an inventory may be prudent.
- Start a checklist of estate debts, such as medical expenses, charge accounts, utility bills, etc.
- Start a checklist of estate assets, such as bank accounts, stocks, credit unions, etc.
- Arrange for pickup or forwarding of mail.

### **If an individual dies without a Will, what is the surviving spouse entitled to?**

Where the surviving spouse has children of the same marriage and no stepchildren, the spouse will inherit the entire estate.

If there is a child or children of the same marriage and the surviving spouse has a child or children of a prior union, then the spouse will take the first 25% of the estate, but not less than \$50,000 nor more than \$200,000, plus one-half of any balance. Decedent's children (from this marriage or any prior union) share the other half equally.

If the decedent has children from a prior union, the spouse will take the first 25%, but not less than \$50,000 nor more than \$200,000, plus one-half of any balance. Decedent's children (from this marriage or any prior union) share the other half equally.

If there are no children, but the decedent is survived by parent(s), the spouse will take the first 25% of the estate, but not less than \$50,000 nor more than \$200,000, plus three-fourth of any balance. The parents will inherit the other one-fourth.

### **What are the first steps that an administrator should take?**

- Locate and protect assets.
- Apply for administration with the Surrogate's office by bringing the original death certificate and by bringing addresses and names of all next-of-kin.
- The administrator cannot be appointed until the 6th day after death, however application for administration can be made at any time.
- Surrogate's certificates are issued by the Surrogate's office and are used to transfer assets of the decedent's estate. They are the Administrator's authority to act for the estate.
- Obtained a Tax ID Number. Except for a sole beneficiary situation, an administrator may wish to open an estate bank account to provide accountability of estate transactions. An identification number may be required and can be obtained from the IRS at 1-(866)-816-2065.
- The administrator must ensure that all debts have been or can be paid by the estate before any distribution, even of personality, can be made.
- Refunding bonds and releases should be obtained from each heir receiving from the estate and filed with the Surrogate's office to protect the administrator from future liability and to release surety bond
- Currently, many estates do not have an obligation for federal or New Jersey inheritance taxes if the estate is under \$1,000,000 gross value. However, the administrator may have to file Federal and State income tax returns for the year of death.
- The final distribution is made when the real estate, if any, has been sold or transferred, all debts and taxes paid and refunding bonds and releases have been filed with the Surrogate's office.

### **What is intestate succession?**

It is the means by which the State of New Jersey distributes your property when you die without a will. The net estate remaining after debts and taxes have been paid are distributed as follows if you die leaving:

- Spouse and child/children of survivor or their descendants:
  - Spouse receives \$50,000 plus one-half of balance if all children are issue of the decedent and surviving spouse.
  - Child/children of both surviving spouse and decedent receive other one-half of balance. If child/children are issue of decedent from a prior relationship, spouse receives one-half of estate and all children divide remaining one-half equally.
  - Grandchildren take their deceased parent's share unless all children be deceased, then all grandchildren share equally.
- Spouse but no children or their descendants and decedent's parent(s) are living:
  - Spouse receives \$50,000 plus one-half balance

- Parent(s) or survivor receives other one-half balance
- Child/children but no spouse:
  - Child/children receive all divided equally
  - Grandchildren take their deceased parent's share unless all children of decedent are deceased, then all grandchildren share equally.
- No spouse and no children or their descendants but parent(s) of decedent survive:
  - Parent(s) or survivor receive all, divided equally
  - If parents do not survive:
    - Siblings receive all divided equally
    - Nieces and nephews take their deceased parent's share unless all siblings are deceased, then all nieces and nephews share equally.
    - If you leave no next-of-kin, the State of New Jersey takes your property.

*NOTE: Any person who fails to survive the decedent by 120 hours is deemed to have predeceased the decedent for purposes of intestate succession.*

### **What obligations and responsibilities does an administrator have?**

The same duties, obligations and responsibilities as an executor of a will, except that distribution is made pursuant to intestate succession statutes. (see probate section)

### **How do I start the process?**

Bring an original death certificate, names and addresses of decedent's next-of-kin and a list of the debts and assets (including account numbers and value and VIN numbers of vehicles) to the Surrogate Court. If any of the decedent's next-of-kin are under 18 years of age, their age must be provided to the Surrogate. The process can begin at any time after death, but the Surrogate cannot issue letters of administration until the 6th day after the decedent's death.

### **When is the surety bond cancelled once the estate is closed?**

After refunding bonds and releases have been filed, the Surrogate will issue a release of surety that you give to the company that issued the bond. The Surrogate is the only person that can release surety.

## Steps to Take Before Disbursement

### What are the final steps that must be taken before an executor can disburse any funds to an heir?

- **Executor Must Mail Out a Notice of Probate**

An executor must complete a Notice of Probate of Will within 60 days from the date of the probate of the will.

**Who:** A written notice to:

All beneficiaries named in will  
Spouse  
Heirs  
Next of kin

**What:** This is a notice in writing stating

The place and date of probate  
The name and address of the personal representative  
A statement that a copy of the will be furnished upon request

**Where, When & How:** A proof of mailing of the above notice shall be filed with the Surrogate within 10 days after the mailing of the notice. When filing the proof of (Notice) Mailing, filing fee at the Surrogate's is \$5 per page.

***NOTE:** If the names and addresses of any of these persons are not known, or cannot by reasonable inquiry be determined, then a notice of the probate of the will shall be published in a newspaper of general circulation in the county naming or identifying those persons as having a possible interest in the probate estate.*

If by the terms of the will property is devoted to a present or future charitable use or purpose, this notice of probate and a copy of the will shall be mailed to:

Attorney General of New Jersey,  
Division of Law and Public Safety  
Division of Law  
Richard J. Hughes Justice Complex,  
25 Market Street  
PO Box 112  
Trenton, NJ 08625-0112

*Certified mail is NOT required by this rule. (Rule 4: 80-6)*

- **An executor or administrator is required to conduct a child support judgment search for any beneficiary who receives more than \$2,000 net proceeds or more from an estate.**
  - The beneficiary shall provide the attorney, insurance company, or agent responsible for the distribution of such funds with a certification that includes: beneficiary's full name, mailing address, date of birth, and Social Security number.

- The executor or administrator shall initiate a search of child support judgments, through a private search company that maintains information on child support judgments, to determine if the beneficiary is a child support judgment debtor. This search shall not exceed \$10 per name that is searched. This fee is chargeable against the net proceeds as a cost of the inheritance.
- If the certification from the search company shows the beneficiary is NOT a child support judgment debtor, the net proceeds may be disbursed immediately.
- If the certification from the search company shows the beneficiary is a child support judgment debtor:
- The executor or administrator shall contact the Probation Division of the Superior Court to arrange for the satisfaction of the child support judgment.
- The administrator or executor shall notify the beneficiary of the intent to satisfy the child support judgment prior to the disbursement of any funds to the beneficiary.
- Upon receipt of a warrant of satisfaction for the child support judgment, the executor or administrator shall pay the balance of the inheritance to the beneficiary.
- If the net proceeds are less than the amount of the child support judgment, the entire amount of the net proceeds shall be paid to the Probation Division as partial satisfaction of the judgment.