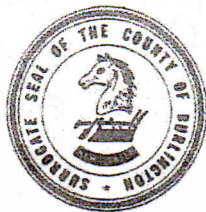


WILLS
AN INFORMATIONAL GUIDE



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The most sensible, practical, and surest way of protecting those who depend on us, is to have a Will.

This booklet is prepared by the Burlington County Surrogate's Court, and is offered free of charge to all Burlington County residents.

It contains information about the importance of having a Will.

We hope this information is helpful, but please remember, nothing can replace the sound advice of an attorney when one has to deal with the more difficult areas of settling an estate.

Should you have any questions concerning Wills, probate or other related matters, we at the Surrogate's Court welcome your call. If you wish to arrange a date to have the Surrogate speak to your club or organization, contact our office as indicated above.

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WHAT IS A SURROGATE?

In the State of New Jersey, the person who determines the validity of Wills in undisputed matters and appoints personal representatives to administer estates is called the **Surrogate**. Each county has a Surrogate's Court and the Surrogate is the Judge of that Court. The Surrogate is a constitutional official elected for a five year term and considered part of the judicial system.

FUNCTIONS OF THE SURROGATE

Probate Wills

Serves as Deputy Clerk of the Superior Court of New Jersey for adoptions and all contested probate matters

Appoints guardians of minors' property and/or person

Supervises and prepares files for adoptions

Process alleged incapacitated persons – Superior Court

Appoints personal representatives of estates

Supervises minors' funds

WHAT IS A WILL?

A Will is a legally enforceable written document that takes effect upon death, and directs the distribution of a person's personal property and real estate.

ADVANTAGES OF HAVING A WILL

To save your heirs time and money, you can plan now for the orderly transfer of your property, both real and personal.

Making a Will will avoid the costs of a bond and possible disagreement among those who are to receive your property.

You decide to whom, when, and what amounts your assets should go.

Select your executor or personal representative, the one who will be responsible for the disposition of your assets.

You may avoid a forced sale of your property, or costly and tedious applications to the Courts for the right to sell.

You have greater assurance that your plans will be carried out as you desire.

Without a Will, your estate must be distributed according to the intestate laws, the provisions of which are general and inflexible. The law will say who shall administer your estate, among whom, and how it shall be provided. If you do not name an executor or a personal representative, your property may not be distributed as you wish, and thus hardship for those you want to safeguard most. Without a Will you lose the privilege of naming a guardian for your minor children. This is vital, particularly if your spouse should not survive you. If you leave no immediate family, failure to leave a Will may result in your property going to persons in whom you have no particular interest.

PREPARING A WILL

A Will should be prepared by a lawyer. This will ensure that the Will is properly phrased, witnessed and able to be admitted to probate.

FOR A WILL TO BE VALID

A Will, to be legal, must be written, signed by the maker (Testator) over the age of 18, have no cross outs through items, erasures, or added writings or notations and must have at least two persons over the age of 18, present to witness and sign the Will.

The witnesses should be likely to outlive the testator and remain in the community. If you do not have a self-proved Will, the whereabouts of the witnesses should be known at all times. If a Will is not self-proved, it is necessary that one of the witnesses appear in the Surrogate's Court to provide an affidavit as to the proper execution of the Will.

The witnesses do not have to read the will or know what it contains. However, they must be told by the Testator that this is his/her Will, and asked to sign as witnesses.

A Will may be simultaneously executed, attested, and made self-proved, by acknowledgement by the testator and affidavits of the witnesses, each made before a notary public or attorney authorized to take acknowledgements and proof of instruments entitled to be recorded under the laws of the State of New Jersey.

INFORMATION HELPFUL IN PREPARING A WILL

List all your assets.

List all your liabilities.

List relatives and others who will be named in your Will and their relationship to you.

Name your gifts to them.

Choose an Executor, Alternate Executor or Personal Representative to administer your estate.

Choose a Guardian and an Alternate Guardian for your minor children in case you die before they become adults.

SAFEKEEPING OF YOUR WILL

Keep your Will in a safe place and tell your Executor where your Will is kept to facilitate probate. If you want to keep your will in a safe deposit box, ask your bank if your Executor will be permitted to remove your Will and certain documents from the safe deposit box in the presence of a bank employee when it is needed after your death but "prior to probate." These documents are as follows:

Deed to cemetery plot

Burial Instructions

Military discharge papers

Marriage certificate

last Will and Testament

LETTERS OF LAST INSTRUCTIONS

It is advisable to give your executor, executrix, personal representative or attorney a letter of last instructions which is separate and apart from the Will. This letter should contain the following:

Names and addresses of those to be notified at death, and relationship of members of family and relatives

Statement as to where Will may be found.

Instructions as to funeral and burial.

Contract for pre-paid funeral.

Location of 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.

Location of any safe deposit boxes and keys to box.

Location of insurance policies.

A list of all bank accounts, checking and savings; their location and where the passbooks are kept.

A list of all stocks and bonds or other securities and where they may be found.

A list of all real estate.

Contract for pre-paid funeral.

IMPROPERLY EXECUTED WILL

The Surrogate does not have authority to probate a Will that is contested or contains any doubt or difficulty on its face. In such a case, the Surrogate will inform the nominated Executor or Personal Representative that it will be necessary to apply to the Superior Court of New Jersey to seek a judgment to allow the Will to be admitted to probate. This procedure normally involves a formal hearing before a Judge of the Superior Court. If it is ultimately determined that the Will was not executed in accordance with the statutory requirements for a valid Will, the Will may be denied probate.

UPDATING OR CHANGING OF A WILL

Periodically, you should review and up-date your Will to reflect changes in your life, such as marriage, birth of a child, death, changes of your financial status or revisions of estate laws. Do not try to change your Will by drawing lines through items, erasing, writing or adding notations. This can destroy it as a legal document and may not be effective to change it. If you are making substantial changes, it is best to have a new Will drawn. Should your changes be minor, you may prefer a Codicil.

MAKING MINOR CHANGES

A Codicil is a separate document used to make minor changes in a Will. It must be signed and witnessed with the same formality as the Will itself. It is not necessary to have the same witnesses on the Codicil and the original Will. The same requirements as to witnesses that apply to a Will apply to a Codicil. Just like a Will, a Codicil should also be made self-proving.

EFFECTS OF DIVORCE UPON WILL

A divorce operates as a revocation of any bequests (gifts) made to former spouse or relatives of former spouse and any appointment of former spouse or relative of the former spouse as Executor, unless the express terms of the Will or court order or property settlement agreement in connection with the divorce provide otherwise. In all other respects the Will is still effective.

**A WRITTEN STATEMENT OR LIST
TO DISPOSE OF TANGIBLE
PERSONAL PROPERTY**

In order to avoid redrafting a Will due to a minor change, a Will may refer to a written statement or list to dispose of items of tangible property not otherwise specifically disposed of by the Will, other than money, evidences of indebtedness, documents of title, and securities and property used in trade or business.

To be admissible, the writing must be either in the handwriting of the testator or be signed by him and must describe the items and the devisees with reasonable certainty. The writing may be referred to as one to be in existence at the time of testator's death; it may be prepared before or after the execution of the Will; it may be altered by the testator after its preparation; and it may be a writing which has no significance apart from its effect upon the dispositions made by the Will.

GLOSSARY

- BENEFICIARY** – Person named to receive property or benefits.
- CODICIL** – An addition or supplement made to delete or add to provisions of a Will.
- CONTINGENT BENEFICIARY** – Recipient of property or benefits if first named beneficiary dies before receiving all benefits.
- CONTRACT**- A legally enforceable agreement.
- DECEDENT**- A deceased person.
- DEVISE**- Gift of real or personal property made by the Will.
- ESTATE**- Everything a person owns, all real and personal property.
- EXECUTOR**- (Also known as Personal Representative) Person or institution named in the Will to carry out the provision and directions of the Will.
- INTESTATE**- When a person dies without a valid Will.
- LEVIED** – To collect by assessment.
- LIEN** – A charge upon property, real or personal for the satisfaction of a debt.
- NOTICE OF PROBATE** – A notice in writing signed by the Executor of the Will to all beneficiaries under the Will and to those who would have inherited under the intestacy laws that the Will has been probated, the place and date of probate, the name and address of the Executor and a statement that a copy of the Will shall be furnished upon request.
- PERSONAL PROPERTY** – Intangible property, such as stocks, bonds, or bank accounts; and tangible property such as furniture, automobile, jewelry.
- PROBATE**- Judicial determination as to the validity of a Will.
- REAL PROPERTY** – Land and buildings.

GLOSSARY

TESTATOR- The person who makes the Will.

TRUST- Property held and managed by one person for the benefit of another.

TRUSTEE – Person or institution, holding property in trust.

WAIVER- A legal instrument relinquishing a right or lien.

WILL – A legal declaration of the manner in which a person wishes his/her estate divided after death.

WITNESS- Person who observes the signing or acknowledgment of a Will by the Testator and who signs the Will attesting to the observation.