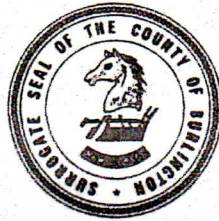


**PROBATE
And
ADMINISTRATION
AN INFORMATIONAL GUIDE**



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

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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The Surrogate Judge will sign a Judgment that admits the Will to probate and then issues Letters Testamentary (a legal document which certifies the Will and is the authorization for the Executor to act on behalf of the estate).

The Surrogate's Court will also issue Short Certificates (a legal document which the executor uses as proof of his/her authority to transfer or sell assets of the deceased). These certificates are needed to accomplish certain tasks such as transferring stocks, closing bank accounts, transferring the ownership of an auto, selling real estate, etc. The number of short certificates that will be needed depends upon the assets solely in the name of the decedent.

A Surrogate **can** deny probate of a Will if the Will was not properly executed or the witnesses cannot be located and proper execution cannot be proven.

The Surrogate may not act when (1) **a caveat** (a formal action filed with the Surrogate's Court in writing, to prevent the Will from being probated or to prevent the appointing of an administrator for the estate) is filed before the entry of the judgment (2) **a doubt** arises on the face of the Will or only a copy of the Will is presented (3) **a non-resident's Will** is offered for probate and has no assets in that county (4) the Surrogate certifies the case to be one of doubt or difficulty or (5) **a dispute** arises as to any matter.

WHAT HAPPENS IF ONE DIES WITHOUT A WILL?

DYING WITHOUT A WILL Intestate Succession

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.

How will property be divided if there is no Will? The following shows how an Estate is distributed in New Jersey without a Will.

Property owned jointly by husband and wife is automatically owned by the survivor and does not become part of the Probate Estate.

If one dies without leaving a Will and is a resident of New Jersey, the State law provides the manner for distributing the property. The net estate remaining after deduction of debts, taxes, family exemptions, etc., would be distributed under the Statutes governing Decedent's Estates and, in the case of most common occurrence, the heirs who would receive such property are as follows:

Property owned jointly by husband and wife is automatically owned by the survivor. The following shows the distribution of separately owned property:

If one dies leaving:

1. Spouse, Domestic: Partner and/or Partner in a Civil Union couple and parent (s), but no children
Spouse, Domestic Partner and/or Partner in a Civil Union couple: The first 25% (but not less than \$50,000.00 nor more than \$200,000.00) plus three fourths of the balance
Parent (s): All other estate assets
2. Spouse, Domestic: Partner and/or Partner in a Civil Union couple and children of Decedent, all of whom are also children of spouse, domestic: partner and/or partner in a civil union couple (and spouse, domestic: partner and/or partner in a civil union couple has no children by any other relationship)
Spouse, Domestic Partner and/or Partner in a Civil Union couple: 100% of estate
Children: Nothing
3. Spouse, Domestic: Partner and/or Partner in a Civil Union couple and children of Decedent, some of whom are not children of spouse, domestic: partner and/or partner in a civil union couple
Spouse, Domestic Partner and/or Partner in a Civil Union couple: The first 25% (but not less than \$50,000.00 nor more than \$200,000.00) plus one half of the balance
Children of the Decedent: All other estate assets

4. Spouse, Domestic Partner and/or Partner in a Civil Union couple and children of Decedent, all of whom are also children of spouse, domestic partner and/or partner in a civil union couple (and spouse, domestic partner and/or partner in a civil union couple has children by another relationship)

- Spouse, Domestic Partner and/or Partner in a Civil Union couple: The first 25% (but not less than \$50,000.00 nor more than \$200,000.00) plus one half of the balance
- Children of the Decedent: All other estate assets

5. Spouse, Domestic Partner and/or Partner in a Civil Union couple and stepchildren (children of spouse, domestic partner and/or partner in a civil union couple who are not Decedent's children)

- Spouse, Domestic Partner and/or Partner in a Civil Union couple: 100% of estate
- Stepchildren: Nothing

6. Children of Spouse, Domestic Partner and/or Partner in a Civil Union couple (stepchildren), but no descendants, parents, descendants of parent or descendants of grandparents

- Stepchildren: 100% of estate

7. No spouse, domestic partner and/or partner in a civil union couple, no children of decedent, no parents, no descendants of parents, no grandparents or descendants of grandparents and no children of the spouse, domestic partner and/or partner in a civil union couple

- The estate passes to the State of New Jersey Unclaimed Property Administrator

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

NOTE: Shares of predeceased children pass to descendants by representation. The new rules on intestacy say that the decedents inherit "per capita, by generation rather than "per stirpes"

ADMINISTRATION

An Administration is the process of managing and distributing the assets of the estate of one who dies without a will ("intestate decedent"). For a New Jersey resident intestate decedent, estate assets are distributed according to laws governing intestacy. Distributions of assets will vary according to individual circumstances and cannot be completed until all of the debts of the estate, such as funeral expenses, debts of the intestate decedent, taxes and administration expenses have been determined and paid.

The process can begin any time after the date of death of the decedent; however, the Surrogate Judge cannot issue letters of administration until the 6th day after the date of death of the decedent.

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

ADMINISTRATION REQUIREMENTS

When an individual dies without a Will, the following are required for the Surrogate to appoint an Administrator of the decedent's estate: (1) At the time of death, the decedent was a resident of Burlington County (2) Certified Death Certificate (3) Immediate next of kin and their addresses (4) List of assets and debts solely in the decedent's name (5) Renunciations of next of kin not seeking appointment as administrator (6) Check or cash for applicable Administration Fees and (7) An appointment to meet with a Surrogate Court staff member.

APPOINTING AN ADMINISTRATOR

An Administrator or Personal Representative is appointed by the Surrogate's Court when there is no will. The surviving spouse or partner in a civil union couple is first entitled to apply for Administration; however, if there is no spouse or partner in a civil union couple or the spouse or partner in a civil union couple does not wish to be appointed, then any heir of the decedent of the proper degree of kinship may be appointed. Before the Surrogate can

appoint the Administrator, heirs not seeking to be appointed as Administrator must renounce their right to be appointed Administrator. In most cases, the Administrator will be required to furnish a surety bond to cover the value of the real and personal property in the estate. The bond protects the creditors and heirs of the estate. The bond must remain in effect until the estate is settled.

THE ADMINISTRATION PROCESS

The Administration process begins when the person(s) seeking to be appointed as Administrator presents to the Surrogate's Court a certified death certificate of the decedent, a list of assets and debts solely in the decedent's name, a list of the next of kin and their addresses. If applicable, the Administrator will obtain the necessary executed renunciations. The person(s) requesting to be appointed will make application and qualify as Administrator of the estate. If a surety bond is required, the Surrogate's Court will provide the form of bond and the Administrator will have the bond executed by an approved bonding company. When all necessary documents are filed with the Surrogate's Court, the Surrogate Judge will sign a Judgment of Administration.

Administration Short Certificates in the amount required to accomplish the tasks of the Administrator such as transferring ownership of decedent's property and payment of debts will then be issued by the Surrogate's Court. The short certificate is a document which proves the authority of the Administrator to manage and transfer the assets of the decedent.

AFFIDAVIT NEXT OF KIN

When a person dies *without a Will* and leaves no surviving spouse, domestic partner or civil union partner and the aggregate value of the estate does not exceed \$20,000.00, an Affidavit Next of Kin may be issued upon application.

To obtain the Affidavit, the affiant (one of the next of kin) must present to the Surrogate's Court a certified death certificate of the decedent, a death certificate of the spouse or partner in a civil union couple if predeceased the decedent and a list of the assets that are held in the decedent's name only. The list should contain a description and value of the asset. Consents called "Renunciations" from other next of kin of equal degree may need to be obtained. The Surrogate will assess a fee for the processing of this form.

AFFIDAVIT OF SURVIVING SPOUSE

When a person dies *without a will* and leaves a surviving spouse, domestic partner or civil union partner and the value of the property (real and personal) owned by the decedent, individually, does not exceed \$50,000.00, an Affidavit of Surviving Spouse/ Domestic Partner/Civil Union Partner may be issued to dispose of the property as the case may be.

To obtain the Affidavit, the affiant (surviving spouse, domestic partner, or civil union partner) presents to the Surrogate's Court a certified death certificate and a list of the assets that are in the decedent's name. The list should contain a general description of the property and the value of the asset. The affidavit must list the specific assets and their value. The affidavit gives the affiant the authority to manage and dispose of the assets listed. The Surrogate will assess a fee for the processing of this form.

The Affidavit of Surviving Spouse/Domestic Partner/Civil Union Partner is issued in lieu of an Administration. If the aggregate value of the assets exceed \$50,000.00, a general administration will be opened. If the surviving spouse, domestic partner or civil union partner renounces or is unable to act, a general administrator must be appointed.

CHILD SUPPORT LIEN

In August of 2000, the Governor signed a law establishing that a Judgment for Child Support entered and docketed with the Clerk of the Superior Court is a lien against the net proceeds of any inheritance. The child support lien has priority over all other levies and garnishments against the net proceeds from an inheritance with the exception of liens for unpaid State Income Tax. The lien prevents the distribution of net proceeds to a beneficiary/heir until a Child Support Judgment is satisfied.

The executor or administrator shall initiate a Child Support Judgment search for any beneficiary who is receiving \$2000.00 net proceeds (after court costs, attorney fees, medical fees, etc) or more from an estate.

The beneficiary shall provide the executor or administrator with a certificate that includes the beneficiary's name, mailing address, social security number and date of birth. To determine whether a beneficiary is a child support debtor, the executor or administrator shall obtain a child support judgment

search through a private search company that maintains information on child support judgments. The private search company may assess a fee not to exceed \$10.00 for each name searched. The fee is chargeable against the inheritance.

If the search dears the beneficiary from a child support judgment, the net proceeds may be distributed to the beneficiary immediately. If the search reveals a child support judgment against the beneficiary, the Executor or Administrator is required to contact the Probation Department of the Superior Court for the satisfaction of the judgment. The Executor or Administrator shall notify the beneficiary of the intent to satisfy the Child Support Judgment prior to disbursing any funds to the beneficiary.

When the Executor or Administrator obtains a child support Judgment satisfaction, the Executor or Administrator shall pay the balance of the inheritance to the beneficiary. The entire amount of the net proceeds shall be paid to the Probation Division as partial satisfaction of the Judgment if the net proceeds are less than the amount of the Child Support Judgment.

GUIDELINES FOR EXECUTOR

As an Executor of an estate there are certain duties that you need to perform. The following are basic guidelines to assist you in the administering of an estate:

1. Within sixty (60) days after the date of probate of a Will, the Executor shall mail to all interested parties (beneficiaries and next-of-kin), a notice in writing that the Will has been probated, the place and date of probate, the name and address of the executor and advising the interested parties that a copy of the Will is available upon request. Proof of mailing (written statement that all parties were served personally or by mail) shall be filed with the Surrogate's Court within ten (10) days of the notice of probate. The filing fee for the proof of mailing is \$5.00 per page. If the names or addresses of any of those persons are not known, or cannot by reasonable inquiry be determined, then a notice of 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 a charity is a beneficiary, notice and a copy of the Will must be given to the Attorney General of the State of New Jersey, Division of Law, PO Box 112, Trenton, NJ 08625.

2. The Executor is responsible for determining and marshaling all assets of the estate. As Executor, you may wish to open an estate checking account to provide accountability of estate transactions. A tax identification number may be required and can be obtained from the Internal Revenue Service. You can contact IRS at 1-800-829-4933.
3. The Executor is responsible for paying the debts, last illness expenses, inheritance and estate taxes and administration expenses from the decedent's assets.
4. The Executor is responsible for filing the appropriate State and Federal tax forms and paying any tax that is due.
5. The Executor may be required to prepare an accounting of the estate assets and disbursements. An informal accounting may be requested by only the next-of-kin or beneficiaries named under the will and should not be requested until one year from the date of probate.
6. The Executor is entitled to a commission of 5% of the first \$200,000.00 of the estate assets and 6% of income earned on estate corpus during the administering of the estate.
7. The Executor has the obligation to distribute the net estate to the beneficiaries in accordance with the terms of the Will in a timely manner.
Prior to the distribution, the Executor shall have each beneficiary execute a Refunding Bond and Release form. Upon receipt of the executed document, the Executor will make the distribution to the beneficiary.
8. The Executor is required by New Jersey law to initiate a child support enforcement order search for any beneficiary receiving in excess of \$2,000.00 prior to the distribution of any money to the beneficiary.
9. The Executor is required by New Jersey law to initiate a child support enforcement order search for any beneficiary receiving in excess of \$2,000.00 prior to the distribution of any money to the beneficiary.

GUIDELINES FOR ADMINISTRATOR

As an Administrator of an estate there are certain duties that you need to perform. The following are basic guidelines to assist you in the administering of an estate:

1. The Administrator of an instate estate is obligated to notify the Attorney General of the State of New Jersey, in the event that there are no surviving heirs. The notice is sent to Attorney General of the State of New Jersey, Division of Law, PO Box 112, Trenton, NJ 08625.
In this case, the net proceeds of the estate would escheat to the State of New Jersey.
2. The Administrator is responsible for determining and marshaling all assets of the estate. As Administrator, you may wish to open an estate checking account to provide accountability of estate transactions. A tax identification number may be required and can be obtained from the Internal Revenue Service. You can contact IRS at 1-800-829-4933.
3. The Administrator is responsible for paying the debts, last illness expenses, inheritance and estate taxes and administration expenses from the decedent's assets.
4. The Administrator is responsible for filing the appropriate State and Federal tax forms and paying any tax that is due.
5. The Administrator may be required to prepare an accounting of the estate assets and disbursements. An informal accounting may be requested by only the next-of-kin and should not be requested until one year from the date of probate.
6. The Administrator is entitled to a commission of 5% of the first \$200,000.00 of the estate assets and 6% of income earned on estate corpus during the administering of the estate.

7. The Administrator has the obligation to distribute the net estate to the beneficiaries in accordance with the intestate laws of the State of New Jersey.
8. Prior to the distribution, the Administrator shall have each heir execute a Refunding Bond and Release form. Upon receipt of the executed document, the Administrator will make the distribution to the heir.
9. The Administrator is required by New Jersey law to initiate a child support enforcement order search for any heir receiving in excess of \$2,000.00 prior to the distribution of any money to the heir.

REFUNDING BOND AND RELEASE

Prior to distribution, each heir/beneficiary shall execute a **refunding bond and release form**. This form is a written agreement and consent of all the beneficiaries dispensing with a formal accounting, approving the actions of the Executor or Administrator, the amount and manner of the distribution and releasing the Executor or Administrator from further liability. A **Refunding Bond and Release** is also a promise by the heir/beneficiary to refund from their distribution, a proportionate share of any legitimate debts, expenses or taxes due in connection with the estate which becomes known after distribution.

In an Administration that required a **surety bond**, the administrator must file a **Refunding Bond and Release** for each of the heirs. A **surety bond** will not be cancelled by the insurance agent unless proof of filing the **Refunding Bonding and Release** with the Surrogate's Court is presented.

The Surrogate is the only person that can release the surety.

The **Refunding Bond and Release** form can be found on this WEB site.

Upon request, your attorney will provide you with a **Refunding Bond and Release** form or prepare the necessary forms for you.

The executed **Refunding Bond and Release** forms are forwarded to the Surrogate's Court for filing and recording. The filing fee is \$10.00 per form up to two (2) pages.

FREQUENTLY REQUESTED TELEPHONE NUMBERS

Burlington County Surrogate's Court:
609-265-5005

Burlington County Office on Aging:
609-265-5069

Burlington County Senior Legal Services
609-265-5945

Burlington County Veteran's Services:
609-265-5008

Burlington County Bar Association:
609-261-4542

Legal Services of Burlington County
609-261-1088

Social Security Administration:
1-800-772-1213

Internal Revenue Service:
(To obtain estate tax identification number)
1-800-829-4933

New Jersey Division of Taxation, Inheritance Tax:
609-292-5033/5035

New Jersey Department of Health, Division of Vital Statistics:
(To obtain death certificates)
609-292-4087

New Jersey Division of Motor Vehicles:
609-292-6500

New Jersey Unclaimed Property:
609-292-9200

GLOSSARY OF TERMS

Administrator – the person, or persons, appointed by the Surrogate Court to handle the estate or assets of a person who died intestate; that is, without leaving a will.

Beneficiary – the person to whom the decedent left all or parts of their estate.

Caveat – a formal action, filed with the Surrogate Court in writing, to prevent the Will from being probated, or to prevent the appointing of an administrator for the estate.

Civil Union – a relationship, registered in New Jersey, between two unrelated adults, age 18 or over, and of the same sex, OR two adults of the opposite sex age 62 or over with all of the same benefits, protections and responsibilities under law as granted to married heterosexual couples.

Codicil – a legal document that makes an addition and/or change to one or more parts of a Will, after the Will was made.

Co-Fiduciaries – two or more persons named in the Will to serve as executors.

Decedent – the person who has passed away

Devise – personal or real property that is left to someone through the decedent's Will.

Domestic Partnership – a relationship, registered in New Jersey, between two unrelated adults, age 18 or over, and of the same sex, OR two adults of the opposite sex age 62 or over.

Estate – all property that is owned by a person, real or personal.

Executor – the person named to manage the assets or estate, and carry out the wishes of the decedent as outlined in the Will.

Fiduciary – any person named or acting in a legal position such as an executor, administrator, trustee, or guardian.

GLOSSARY OF TERMS

Guardian – one who is appointed to act on behalf of a minor, or incapacitated person.

Heir – any person who is entitled to be the recipient of all or part of the estate of a decedent through the intestate laws.

Intestate – the person dies without leaving a Will.

Issue – a person's lineal descendants which includes all generations either natural or adopted.

Incapacitated Person – one who is impaired mentally to the point of lacking sufficient ability to make sound decisions regarding the handling of himself and his affairs.

Minor – an individual under the age of 18 years.

Personal Property – any assets or possessions such as automobiles, bank accounts, stocks, or bonds.

Probate – the process of presenting a Will to determine its validity, and officially appointing the named executor.

Self Proved Will – one that has been signed by the testator in the presence of two witnesses, and all of them signing in front of a notary or one who is authorized by the Courts to recognize the signatures.

Short Certificate – the document of the Surrogate Court that officially appoints an executor of a Will, or an administrator for an estate, and authorizes them to manage the assets of the decedent.

Surrogate – In New Jersey, an official elected in a county to oversee the probate process.

Testate – having made a Will

Testator – any person who makes a Will.

GLOSSARY OF TERMS

Trust – property held and managed by a person (*TRUSTEE*) for the benefit of another.

Will – a legal document made by a person that details his or her wishes for the way their estate is to be managed upon their death.

Witness – one who is present at the signing of a legal document such as a Will, and can attest to the validity of such signature.

DEGREES OF KINDRED

