

FAQ's about the Surrogate's Court

Q. How do I begin the Probate procedure?

A. The person that wishes to be appointed to represent the Estate will bring a certified copy of the death certificate and the original Will. While the Surrogate can begin the paperwork anytime after death, probate cannot be completed until the day following the tenth day after death.

Q. Is the Probate process expensive?

A. No. While fees are set by the New Jersey legislature, most probates cost about \$100.00.

Q. Who has the right to be appointed when an individual dies without a Will?

A. The surviving spouse has the first right. However, any heir may be appointed assuming they obtain the appropriate renunciations from any other heir who has an equal or prior right to be appointed.

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

A. Where the surviving spouse has children of the same marriage, the spouse will receive the first \$50,000.00 and one-half of the balance. The children will receive the other one-half. If there are no children, then spouse will take whole Estate unless there are surviving parents of the deceased. In that case, the spouse will receive the first \$50,000.00 and one-half of the balance. The parent(s) will receive the other half.

Q. What is the Probate procedure in a small Estate with no surviving spouse?

A. If a person dies with no surviving spouse but does leave heirs and the total value of the real and personal property does not exceed \$10,000.00 one of the heirs with consent of the others may obtain an Affidavit of Heir in lieu of filing a formal administration.

Q. Why do I need to post a bond if someone dies without a Will?

A. 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.

Q. How does access joint bank accounts or CD?

A. If the Accounts or CD 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.

Q. How many Surrogate certificates do I need?

A. Make a list of the Estate assets to show the number of transfers that will need to take place. The number of transfers will reflect the number of certificates needed. You will be able to request additional certificates as needed from the Surrogate's Office.

Q. Will I need to file a formal accounting as the person representing the Estate?

A. No, as most Estates in New Jersey are settled without formal Court proceedings. However, you may file an informal accounting with the Court or a written agreement form from all of the beneficiaries to the Estate that dispenses with the accounting, approves the actions of the representative and provides for the manner of distribution.

Q. How do I prove that distribution or legacies were paid?

A. 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.

Q. What will I use Surrogate Certificates for?

A. 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.

Q. Will I be entitled to compensation as a personal representative?

A. Yes. Commissions have been set by the New Jersey legislature based on corpus and income amounts allowable on all Estates, Guardianships and Trusts. An additional sum is allowed if there are co-fiduciaries.

Q. What is required of the personal representative?

A. They are required to collect and safeguard the assets of the Estate, pay debts and taxes then turnover the balance of the Estate funds to the beneficiaries.

Q. As a personal representative am I, protected against creditors of the Estate?

A. 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.

Q. Will I have to send copies of the Will to the beneficiaries?

A. The representative is required, within sixty (60) days of probating the Will or being appointed administrator to notify the next of kin, heirs at law and all beneficiaries in writing that the Will has been probated, date and place of probate, name and address of the personal representative

Q. How is a safe deposit box handled?

A. 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.

Q. How will the personal representative obtain the funds to pay debts?

A. 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.

Q. How soon must state inheritance taxes be paid?

A. Eight months from date of death New Jersey Inheritance tax returns must be filed to avoid interest. While an extension to file may be granted, the tax has to be paid initially.

Q. Will unpaid inheritance taxes become a lien on real and personal property?

A. Yes. Tax waivers will be necessary from the New Jersey Inheritance Tax Bureau to sell real estate. Waivers are 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 report and may be transferred without a waiver. Personal property like bank accounts that do not meet affidavit of waiver or L-8 formula will not be fully released until the appropriate waivers are received.

Q. How can I make changes to my Will?

A. By a codicil, which is an addition or supplement made to change or add provisions to your Will, or simply by a new Will. Any handwritten changes and markings made can invalidate the Will. To probate such a will it will have to go to the Superior Court.

Q. Can children, spouse or other family be disinherited under my Will?

A. Yes; however, a surviving spouse may be able to file an elective share against the Estate and a child that shows good cause may also seek to recover a share of the Estate.

Q. Is an attorney needed to prepare a Will or represent an Estate?

A. No. It is however strongly suggested that you seek the services of an attorney to prepare your Will to avoid defects that can cause more problems than the initial cost of having a Will drafted.

Q. How can the probate process be stopped in the Surrogate's office?

A. 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.

Q. Can I challenge a probate after it is completed?

A. 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.