

## Wills & Estate Planning

Contributed by Administrator  
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### Wills and Probate

This page is prepared by the Cumberland County Surrogate's office to all county residents to inform them concerning the need for a Will and to outline the meaning of "Probate" and the course of action required to complete probate.

It also touches on "Intestate Succession." That is, what happens to an estate when one dies without a Will. Federal and State Estate taxes are discussed as well as gift taxes.

Since laws, rules and regulations stated in the booklet may change, it is suggested that you consult your attorney when making a Will.

### A WILL -- OF YOUR OWN

The expression, "last will and testament" is historical and comes from the time when a distinction was drawn between a "testament" -- a term derived from the Latin, which disposed of personal property, and a "will" -- a term derived from the Anglo-Saxon, which disposed of real property. The word "will" is the current modern equivalent of both, although the heading of a will customarily employs the longer form. Some states make a distinction as to the decedent of real property, on the one hand, and personal property on the other.

Everyone owns something and, therefore, is an owner of property -- real or personal -- and has an estate. REAL PROPERTY is land and buildings. Everything else that may be owned is called PERSONAL PROPERTY, such as bank accounts, stocks, bonds, furniture, automobiles, money, life insurance, jewelry, and personal effects.

It is the owner's privilege to select to whom his or her estate will go. You may choose one of several ways to dispose of your estate -- by a will, by creating a trust or joint ownership, or by letting the law distribute your property.

This bulletin is meant to familiarize you with your rights and to point out necessary steps to be taken to transfer property to your heirs. It is not a substitute for sound legal advice.

### WILLS -- WHY EVERYONE SHOULD MAKE ONE

Transfer of an estate to an individual's heirs after his death may be an orderly or thoroughly disorganized process. It

depends on a four-letter word -- WILL. Every person, eighteen (18) years of age or over should make one. This important document is a legal declaration of the way an individual wants his property distributed.

Whether the estate is large or small, it is desirable to transfer what you own with a properly executed will -- whether you are a man or woman, married or single. Those without wills may leave their survivors in financial insecurity or downright frustration. It is to the advantage of both the individual and his family or his close friends that he execute a will.

Contrary to general opinion, frequently the smaller amounts involved, the greater trouble when there is no will. Squabbles over a few thousand dollars can be more bitter than fights over many thousands.

## YOUR WILL -- A BLUEPRINT FOR THE FUTURE

Making a will is an important step in your financial management program. To save your heirs time and money, plan now for the orderly transfer of your property.

In this way the cost of a bond and possible disagreement among those who are to receive your property may be avoided. You decide to whom, when, and in what amounts your assets should go. You select your executor or personal representative, the one who shall be responsible for the disposition of the estate. You may avoid forced sale of your property, or costly and tedious applications to courts for the right to sell it. You have greater assurance that your plans will be carried out as you desire.

One way to guarantee trouble to a family is not to make a will. Court records bulge with tragic tales of families torn apart and caused immeasurable pain and financial expense because the income producer did not do so.

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 divided. By losing the privilege of naming your executor or personal representative, you may make a costly mistake. Your property may not be distributed as you wish, and thus cause 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.

Wills are not do-it-yourself projects. Secure the services of an attorney. Although many prepared without legal aid have been successfully executed, the risk is too great. A minor detail may invalidate your good intentions.

## STEPS IN PREPARING YOUR WILL

A document that will stand up in court, if necessary, and be tailor-made to meet the needs of your family, must first be thought out carefully by you, and then skillfully prepared by a lawyer who specializes in will drafting and estate planning. He can guide you to the best decisions -- but only after obtaining all the facts that you alone can give. Thus, you can be sure that your will is properly phrased, witnessed, and has all the technicalities observed. It is penny-wise and pound-

foolish not to pay a lawyer's fee for this service. The charge will depend on the size and character of the estate and the work involved.

Here are some points to know when making a will:

- You don't need to make an itemized statement of your assets, nor do you need to state the disposition of your property item by item.
- You can change it at any time you wish, as your assets, beneficiaries or desires change.
- Your will is not recorded before death; no one need know of it if that is your wish.
- The existence of the will does not affect your ability to sell or dispose of property. You may continue as though you had not written the document.
- While the law permits a beneficiary to witness a will, it is recommended that a beneficiary witness be used only when a disinterested party is not available, in order to avoid future challenges as to conflict.

Start by making a list of everything you own and all you owe -- a statement that will show exactly where you stand financially. Decide to whom you will leave your real and personal property. Do it systematically. Be certain you have stated just what your wishes are by making a list of the persons involved, their relationship to you, your objectives, when their bequest is to be given, and how it is to be provided -- through a trust fund, life insurance trust, etc., and the source of the funds, whether from the general estate or proceeds of insurance policies. Take this list to the lawyer who is counseling with you.

Select an executor, executrix or personal representative to administer the will. This may be the beneficiary who will inherit the bulk of your estate, a member of the family, your legal or financial advisor, a trusted friend or business associate. You should name a contingent executor or personal representative to act in case your first selection dies before you, or is unable to serve.

A bank can act as executor, personal representative, trustee under a trust, or guardian of either a minor or an incompetent person. A bank is experienced and familiar with accounting and management details. It is financially responsible and a continuing institution -- an individual may die, but a bank has continued life.

In selecting your executor or personal representative and trustee, the choice should be made with great care. The decision should be businesslike, not sentimental. While sentiment and friendship cause some people to name members of the family or close friends, remember that your executor or personal representative has the important responsibility of settling your estate and seeing that the wishes expressed are faithfully carried out.

Here are a few of things an executor or personal representative must do, in addition to seeing that the will is offered for probate:

- Qualify as executor, (also known as Personal Representative), obtain a certificate of authority, and if necessary,

execute a bond.

- Locate and take possession of all property, discover and assert all rights and line up claims owned by the estate.
- Prepare and file an inventory of all property and interest of any kind belonging to the estate, listing the appraised value.
- Review all assets, liquidating those of doubtful character.
- Advertise for claims and pay them in the order cited by law.
- Collect monies due the estate.
- Figure and pay taxes.
- Pay legacies under the will.
- Distribute the estate.
- Make final accounting to the court.

It is important that you name a guardian if you have minor children.

When you consult the attorney, ask for a rough draft of your will and study it carefully before signing the final copy.

## SIGNING YOUR WILL

A will must be written, signed by the testator (maker) and witnesses. The original copy is the legal document and must be signed. You may wish to have unsigned carbon copies available for your convenience.

In New Jersey a will, to be legal, must have at least two witnesses. The testator and the witnesses are required to be present at the signing, and each must see the others sign. The witnesses do not have to read it or know what it contains. However, they must be told by the testator that it is his or her will, and asked to sign as witnesses.

The witnesses should be likely to outlive the testator and remain the community.

While the law permits a beneficiary to witness a will, it is recommended that a beneficiary witness be used only when a disinterested party is not available, in order to avoid future challenges as to conflict.

If the witnesses and the testator execute an affidavit before a Notary Public, it will not be necessary for either of the witnesses to appear in Surrogate Court at the time of Probate. Your attorney will prepare an Affidavit for signatures.

## COMMON DISASTER CLAUSE

A well-drawn will contains a common disaster clause to establish contingent beneficiaries if both husband and wife die within a stated period of time. Without such a clause, if both husband and wife die with no way to determine who died first, their individual property is disposed of as if they had died a widow and widower. Property owned jointly is divided proportionately among the heirs of the joint owners; the husband's heirs receive one-half, the wife's heirs one-half.

Couples of modest means frequently name each other as sole beneficiary, and each has an independent will. Such an arrangement avoids many complications for the survivor when there are minor children.

## SAFEKEEPING YOUR WILL

Keep your will in a safe place, but let someone know where it can be found. If kept in a safe deposit box, it usually can be removed by the executor in the presence of an employee of the bank. This may be done before the inventory of the contents is made by the District Supervisor of the Transfer Inheritance Tax Bureau.

Husband and wife should have their own wills. They each should know where both are kept. Above all, do not keep your will in the back of your desk or in another place where it may be lost or thrown away.

## KEEPING YOUR WILL UP TO DATE

Periodically review your will to keep it up to date. Keeping it current is just as important as making one in the first place. Changes in your life such as marriage, birth of child, death, crippling accident, change of witnesses, purchase or sale of property, a change in your financial status -- or a change in the estate law may make important revisions or a new will advisable.

A will drawn in another state can be valid; however, revisions in relation to New Jersey laws may be prudent. You are free to change it any time, but do it correctly.

## HOW TO CHANGE YOUR WILL

The safe way to change a will is to have a new one drawn; however, a codicil may be effective.

A codicil is a separate document used to make minor changes. It must be signed with the same formality as the will itself. It is not necessary to have the same witnesses on the codicil and the original will; however, both sets of witnesses must prove the will.

Do not try to change your will by drawing lines through items, erasing, writing over or adding notations. This may destroy it as a legal document.

## INTESTATE SUCCESSION

When no will exists, the statutes of New Jersey provide for the distribution of property to heirs, that is, by intestate succession.

HOW WILL YOUR PROPERTY BE DIVIDED IF YOU HAVE NO WILL? THE CHART BELOW SHOWS HOW AN ESTATE IS DISTRIBUTED IN NEW JERSEY IF YOU DO NOT LEAVE A WILL.

If you die without leaving a Will and are a resident of New Jersey, the State law provides the manner for distributing your property. Your 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.

(Effective September 1, 1978)

## APPOINTMENT OF ADMINISTRATOR OR PERSONAL REPRESENTATIVES

When there is no will, an administrator, administratrix or personal representative is appointed by the court. Any close relative may be appointed.

For an individual or a bank to be appointed administrator or personal representative, all other heirs must renounce their right. A surety bond must be furnished by paying a premium to a surety company for signing his or her bond. In the case of spouse, the need for a surety bond is waived if the surviving spouse is the sole inheritor of the estate not exceeding \$50,000.00. If the estate is over \$50,000.00 a bond must be provided for the amount over \$50,000.00.

The county surrogate grants letters of administration showing the authority to act.

## APPOINTMENT OF GUARDIAN

A guardian may be appointed by the court for minor children. In order to sell or dispose of minors' interest in a parent's land, a guardian must be appointed by the Probate Court to sign the deed for them. The expense of having the guardian appointed, bond for the guardian, appraisals, court costs and attorney's fees are charged to the minor.

The guardian applies to the court for permission and approval to sell land or to spend the children's money for their support or education. The guardian must account for income and disbursements -- by court action if necessary.

HAVE YOU MADE A WILL, OR DO YOU ACCEPT THE PROVISIONS MADE BY THE STATE FOR DISPOSAL OF YOUR PROPERTY? A WILL IS A VERY IMPORTANT PART OF YOUR FINANCIAL PROGRAM AND PLANNING FOR THE FUTURE.

## HOW A WILL IS PROBATED

Upon the death of the testator or testatrix, the will is probated. This is the legal process which establishes the genuineness of the will. It is done by the surrogate in the county where the testator or testatrix resides at the time of death.

The executor, executrix or personal representative is appointed by going to the Surrogate Court with the will, a death certificate, and one of the witnesses.

If the "attestation" clause (where the witnesses sign) is properly worded, only one of the witnesses need be present when a will is probated. If the attestation clause is not correct, both witnesses must be present. If both witnesses are dead, and there is one attestation clause, the will can be probated by proving their signatures. If they have moved away, the surrogate can appoint a commissioner where the witnesses reside to take their testimony.

If an Affidavit of Testator and witnesses is acknowledged by a Notary Public, the witnesses need not appear at the time

of probate.

## EXECUTOR/EXECUTRIX

Within 60 days after the date of the probate of the will, the executor/trix must mail to all beneficiaries under the will; the spouse, heirs, and next of kin to the deceased, a notice in writing that the will has been probated, the place and date of probate, the name and address of the executor/trix, and a statement that a copy of the will shall be furnished upon request. Proof of mailing shall be filed with the Surrogate within 10 days of the mailing date.

If by terms of the will, property is devised to a charity, notice and a copy of the will shall be mailed to the Attorney General.

## NOTICE TO CREDITORS TO PRESENT CLAIMS

When a NOTICE TO CREDITORS is published, the executor/trix, administrator/trix shall mail a copy of the NOTICE TO CREDITORS to each creditor of the estate of which the personal representative knows or which can be ascertained by reasonable inquiry, by ordinary mail to the creditor's last known address.

## A TRUST

If there is a question of the ability of your beneficiaries to manage money or if you are in a high tax bracket, ask your lawyer about setting up a trust. A trust may be created by an agreement or by your will giving property to a third person - trustee - to hold and administer for the benefit of the persons named in the trust. A trust may reduce estate, legal, and administrative expenses.. The trustee is entitled to a fee for such service.

## JOINT OWNERSHIP

Another way to transfer property is through joint ownership. Real estate owned by both husband and wife automatically becomes the sole property of the survivor.

If two or more persons other than husband and wife own real estate together, each owns an undivided share as tenant in common, unless the deed states they are to own "as joint tenants and not as tenants in common." With exceptions, real estate held in joint ownership goes to the survivor or survivors when one of the joint owners dies. An interest in real estate owned by tenants in common passes to the heirs of the deceased.

Personal property may be owned jointly with right of survivorship, the survivor becoming the sole owner. Checking accounts, savings accounts or stocks and bonds may be held in joint ownership with right of survivorship, or as tenants in common.

## LIFE INSURANCE

A life insurance policy is a contract between the policyholder and the company. The proceeds are paid according to the terms of each contract.

Life insurance should be payable specifically to a designated beneficiary. A contingent beneficiary or beneficiaries as well as a primary beneficiary should be named in each policy. A contingent beneficiary is important in case of simultaneous death of both the policyholder and the beneficiary, or if the beneficiary dies first. Without a contingent beneficiary, life insurance money passes to the estate and is subject to New Jersey inheritance tax and the executor's, administrator's or personal representative's commission.

Although insurance proceeds may be subject to Federal Estate Tax, a named beneficiary will receive the insurance free from the New Jersey Inheritance Tax or other charges against the estate.

## SOCIAL SECURITY

The Social Security Act provides for survivor's benefits to the family and other dependents of covered persons. Benefits may include monthly payments and a lump-sum death payment. Benefits are not paid automatically. Upon the death of a person who has worked under social security, a member of the family must file application for benefits with the local social security office.

## VETERANS' BENEFITS FOR DEPENDENTS

Write or visit your nearest Veteran's Administration Office if the deceased, man or woman, was a veteran of World War I, World War II, the Korean Conflict or the Vietnam War, for information regarding benefits paid to a widow or children.

## TAXES THAT INFLUENCE YOUR WILL

Three kinds of taxes can influence the provisions of your will: inheritance, estate and gift.

An inheritance by will, by law, by surviving joint owner, or from life insurance is not income and is not subject to income tax.

## New Jersey Inheritance Tax

Inheritance Tax is a tax payable by an heir or beneficiary for the right to acquire the property of a deceased person or to receive a gift in anticipation of death. The tax is determined by the amount inherited and by the relationship of the individual to the deceased.

## LETTER OF LAST INSTRUCTIONS

Few persons expect to die when they do, and, therefore, relatively few leave their affairs in perfect order. Those who administer an estate and take care of what is left often find themselves without necessary information. To facilitate their job, it is advisable to give your executor, executrix, personal representative or your attorney a letter of last instructions -- which is separate and apart from your will. This letter, to be opened upon your death, 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 your will may be found.
- instructions as to funeral and burial. You may wish to specify, for example, that, as a veteran you be buried in a national cemetery. Exercising your veteran's right to burial in a national cemetery may save your estate expense.
- where your 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 may be found. The latter is important if you wish to be buried in a national cemetery.
- where your membership certificates in any lodges or fraternal organizations which provide death or cemetery benefits may be found.
- location of any safe deposit boxes you may have, and where keys are kept.
- a list of your insurance policies, and where they may be found.
- a list of all bank accounts, checking and savings; their location and where the passbooks are kept.
- a list of all other savings accounts; for example, credit union deposits, etc., and passbook are kept.
- a statement concerning any trusts and/or pension systems from which your estate may be entitled to receive benefits.
- a list of all real property owned by you with the location of deeds, mortgages, abstracts, and insurance policies for real property owned.
- location of copies of income tax returns for previous 5 years.
- receipted bills and cancelled checks for 5 years.
- lists of debts and names of creditors -- with addresses.
- a statement of reasons for actions taken in your will, such as disinheritances. It is usually better to place the explanation in a separate but accompanying letter, rather than in your will, to avoid a complicated will and expensive litigation.
- list of any gifts made and information needed for estate taxes.
- a list of any prepayments made, especially for funeral expenses.

## GLOSSARY

Administrator, Administratrix (also known as Personal Representative) --

Person or institution appointed by the court to manage and distribute the estate of a person who dies without a will.

Beneficiary -- Person named to receive property or benefits.

Codicil -- An addition or supplement made to change or add provisions to a will.

Contingent beneficiary -- Receiver of property or benefits if first-named beneficiary dies

before receiving all benefits.

Contract -- Legally enforceable agreement.

Decedent -- A deceased person.

Devise -- To give real or Personal Property.

Estate -- Everything a person owns, all real and personal property owned.

Executor, Executrix (also known as Personal Representative) -- A person or

institution named in the will to carry out the provisions and directions of the will.

Intestate -- A person who dies without making a valid will.

Legatee -- Person who receives personal property under a will.

Levied -- To collect by assessment.

Lien -- A charge upon property, real or personal, for the satisfaction of a debt.

Personal property -- Intangible property, such as stocks, bonds, or bank accounts; and tangible property such as furniture, automobile, jewelry.

Probate -- Official proof of the genuineness of a will.

Real property -- Land and buildings.

Surrogate -- A judicial officer who has jurisdiction over the probate of wills in the absence of a contest and acts as the Clerk of the Probate Court in the settlement of estates, guardianships, and trusts.

Tenants in common -- Two or more persons owning individual interests in property.

Testator, Testatrix -- The person who makes a will.

Trust -- Property owned 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 estate divided after death.

Witness -- Person who observes the signing of a will and also attests to the signatures.