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PROBATE

1. What is Probate?

Probate is the process which validates the Last Will & Testament and permits an executor to transfer assets as directed by a decedent in their Last Will & Testament (the decedent who made the Last Will & Testament is called a “testator”) to the beneficiaries (recipients).

Probate is **NOT** complicated in New Jersey.

- *you do not need to bring an attorney with you.
- *you need not make an appointment
- *the court is open between 8:30 a.m. and 4:30 p.m.

2. Where do I go to Probate?

To probate a Last Will & Testament, you should contact the Surrogate’s Court for the County in which the testator resided. A Last Will & Testament can be probated by the Bergen County Surrogate under these circumstances:

1. The testator resided in Bergen County
2. An out of state resident owned property exclusively in Bergen County at the time of his or her death.

3. What do I need to bring with me to Probate?

1. Certified Copy (raised seal) of the Death Certificate
2. Names & Addresses of closest surviving next-of-kin (regardless if they’re named in the Last Will & Testament or not)
3. Original Last Will & Testament of the decedent

IMPORTANT NOTE #1: **ONLY** an original Last Will & Testament can be probated in the Surrogate’s Court; you cannot probate a copy of a person’s Last Will & Testament.

IMPORTANT NOTE #2: WE DO NOT ACCEPT OUT OF STATE CHECKS UNLESS THEY ARE CERTIFIED CHECKS. PERSONAL CHECKS WILL ONLY BE ACCEPTED IF THEY ARE DRAWN UPON A NEW JERSEY BANK BEARING A NEW JERSEY ADDRESS.

IMPORTANT NOTE #3: Neither the Last Will & Testament nor the Certified Copy of the Death Certificate that you bring to probate will be returned to you; they will remain on record with the Surrogate's Court in Hackensack.

4. May I write or make notations on a Last Will & Testament?

NO! DO NOT make handwritten changes to your Last Will & Testament after it has been signed by you and your witnesses. Once you write on a will, you invalidate it.

5. Do I have to Probate? - OR - When is Probate necessary?

Whether a particular asset to be transferred must go through probate or not depends on how ownership (title) to the asset is held. For example, if a title to an automobile or a piece of real estate is held in the decedent's name alone, the next of kin would have to visit the Surrogate's Court in order to be appointed as executor (or administrator in the absence of a Last Will & Testament) in order to change the title of the vehicle or the piece of property. However, if **ALL ASSETS** (bank accounts, securities, cars, real estate, etc.) are held by the testator AND another person as "Joint Tenants with Right of Survivorship," or in the event of a married couple as "Joint Tenant By the Entirety" you do not have to probate.

6. What about 401(k)'s, IRA's, life insurance proceeds and other assets that pass outside of the Last Will & Testament?

"Beneficiary designation property" is generally non-probate property which passes in accordance with beneficiary designations assigned by the testator. Life insurance proceeds, 401(k) plans, IRA's, employee death benefits (e.g., pension, profit-sharing, etc.) and accounts titled "Payable on Death" (POD) and/or "In Trust For" (ITF) are typical beneficiary designation property.

7. Where should I keep my Last Will & Testament?

An original Last Will & Testament should be kept in a safe, fireproof place. A photocopy should also be kept with your other important papers including instructions as to where the original has been stored.

IMPORTANT NOTE #1: YOU CANNOT PROBATE A COPY OF A LAST WILL & TESTAMENT, ONLY AN ORIGINAL.

IMPORTANT NOTE #2: IF NO ONE CAN LOCATE YOUR LAST WILL & TESTAMENT UPON YOUR DEATH, IT SERVES NO PURPOSE AND CANNOT BE PROBATED.

Further, a safe deposit box is an appropriate place to keep a Last Will & Testament. A bank employee should be present as the box is opened. If the Last Will & Testament is contained in the box, it may be released to the named executor. An alternative is to have the named executor and the successors sign the signature card for the safe deposit box. Because a Last Will & Testament may not be located immediately after, nor can it be probated until ten (10) days subsequent to a death, it is best not to rely on a Last Will & Testament for burial instructions. Those instructions ought to be specified in a private letter, or living will, or funeral directive.

8. How do I make changes to my Last Will & Testament?

If you wish to change any provisions of your Last Will & Testament, it can be done through a properly executed amendment. An amendment to a will is called a "codicil." Codicils can be used for simple changes. Significant changes are best made by making a new Last Will & Testament. A new Last Will & Testament avoids any risks of inconsistencies that could occur among, and from having several codicils.

9. Should I have a new Last Will & Testament drafted if I move into or out of New Jersey?

It would be prudent to consult with a local attorney to ensure that the Last Will & Testament conforms to local laws in the State where you reside.

10. Do I need an appointment?

You do NOT need an appointment. However, we ask that you arrive at the Surrogate's Court no later than 4:00pm in order to process your paperwork in a timely fashion.

11. Why do I have to be bonded and what is a bond?

A surety bond protects the assets of the estate when someone dies without a Last Will & Testament on behalf of creditors and other heirs other than the administrator. If there is no will, the law requires the Administrator of the estate to be bonded.

12. How many Surrogate certificates do I need? DO I get the certificates on the same day?

You will need a number of certificates sufficient to transfer the assets that a decedent held in his or her name alone. We recommend one or two extra certificates to cover something that you may have forgotten.

You should not expect to receive your certificates on the same day.

IMPORTANT NOTE#1: Surrogate certificates will only be good for 30 to 60 days when it comes to stock transfer, depending on the transfer agent.

13. Is a Last Will & Testament filed before death?

Not in the State of New Jersey.

14. Why do I have to list the next-of-kin if they are not beneficiaries?

If there is no Last Will & Testament, some of them may need to renounce or consent to permit an Administrator to be appointed.

If there is a Last Will & Testament, it is contested in Superior Court and subsequently set aside, the next-of-kin (heirs at law) may become beneficiaries.

15. How often should I review my Last Will & Testament?

Every three years or whenever you feel that you need to make a change.

16. What is a Refunding Bond & Release Form?

A Release and Refunding Bond is signed by a beneficiary when the Executor or Administrator is making final distribution on the estate. It proves that the quest has been received by the beneficiary and releases the Executor or Administrator from their obligation. In some instances, if an Executor or Administrator makes partial distribution they will ask that a Partial Release and Refunding Bond be signed for partial distribution.

The refunding part is that if a legitimate bill is presented to the Executor or Administrator after distribution, beneficiaries agree to refund to the Executor or Administrator a sufficient amount in order to satisfy the amount.

17. If it's only a small estate, do I have to probate the Last Will & Testament or can I get a small estate affidavit?

Last Will & testament takes precedence over all other documents. A small estate affidavit is ONLY for an estate when someone dies without a Last Will & Testament.

18. When is an Estate Closed?

When there is an Administration, the estate is closed when the Administrator files his or her Release and Refunding Bond and is released from his or her surety bond. At that point, no further letters will be issued.

When there is a Last Will & Testament, Letters Testamentary are still available to the Executor after the Release and Refunding Bonds are filed, because the Executor is not subject to surety bond.

19. What is a **POLST** form?

POLST is a **Practitioner Orders for Life-Sustaining Treatment**. It is a form similar to an advance medical directive that is valid in all health care settings and designed to be completed jointly by an individual and a physician or advance practice nurse, expressing the individual's goals of care and medical preferences. One might outline specific goals of care within the document, HIPAA disclosures, appoint a surrogate decision-maker, outline specific treatments or life saving measures that are (or are not) to be taken such as cardiopulmonary resuscitation (CPR), artificially administered fluids and nutrition, or airway management.

Adopted in NJ in 2012, the document "contains immediately actionable, signed medical orders on a standardized form; includes medical orders that address a range of life-sustaining interventions as well as the patient's preferred intensity of treatment for each intervention; is typically a brightly colored, clearly identifiable form; and is recognized and honored across various health care settings." (N.J.S.A. 26:2H-130). Once completed, this form becomes part of that person's medical record.

According to the [National POLST Paradigm](#): "A POLST form does not replace an advance directive — but they work together. While all adults should have an advance directive, not all should have a POLST form."

You may wish to visit a page dedicated to POLST via the New Jersey Hospital Association by clicking [HERE](#). They have links where you may download the newest version of the POLST form to discuss with your physician and your attorney.

The direct link is <http://www.njha.com/quality-patient-safety/advanced-care-planning/polst/>.

As always, I highly recommend that you discuss your individual needs and your estate as a whole with a legal professional who has your best interests in mind before you make a commitment to any document. Remember, this is the money and property that you have worked an entire lifetime to achieve; it is worth a thorough investigation and calls for nothing less than the plan of your life.

20. What is a Funeral Agent?

In the State of New Jersey, you can prearrange and prepay your funeral, you can acquire a cemetery plot or express where you would like your ashes to be scattered. You can appoint a person in your Last Will & Testament (such as a "Funeral Agent") to control your funeral and the disposition of your remains,

as per N.J.S.A. 45:27-22. However, if you do not appoint someone in your Last Will & Testament, statute directs that certain people or groups of people are given the authority to make the decision(s), in order of priority:

- (1) The surviving spouse of the decedent.
- (2) A majority of the surviving adult children of the decedent.
- (3) The surviving parent or parents of the decedent.
- (4) A majority of the brothers and sisters of the decedent.
- (5) Other next of kin of the decedent according to the degree of consanguinity.
- (6) If there are no known living relatives, a cemetery may rely on the written authorization of any other person acting on behalf of the decedent.

IMPORTANT NOTE: Your Last Will & Testament cannot be probated until ten (10) days after your death. Those ten (10) days do not include the actual day of death. I advise that you inform your executor and/or funeral agent, well in advance, of your intentions so they know funeral and disposition of your remains instructions.

As always, I recommend that you sit down with a live professional who understands the complexities of the law and who is going to provide feedback on the intricate nature of what one might be trying to accomplish through the drafting of a Last Will & Testament before making any of these decisions. What may work for one person may not work for their friends and family members.

GUARDIANSHIP

1. How do I apply for Use of Funds?

A guardian may seek permission of the Superior Court to withdraw funds from the minor's account to be used for the support, maintenance, education, general use and benefit of the minor (and under special circumstances for the support of members of the minor's household, who are unable to support themselves and who are in need of support). For more information on this process and instructions on the procedure [CLICK HERE](#).

2. Why Do I need consent for guardianship of a minor from the other parent when I have custody of the minor? Or, when the other parent has no contact with the minor?

Unless the other parent's rights have been terminated by a court order, they are still a parent and the law requires them to consent.

4. Why do I have to be appointed a guardian if I am the parent?

New Jersey Law requires that a minor receiving funds greater than \$5,000 have a guardian appointed of the minor's assets until the minor reaches age 18.

3. Does the Surrogate's Court have forms available for a Guardianship?

No.

MISC

1. What do I do if someone I know is 18 years of age or older, living in the community and is the subject of abuse, neglect and/or exploitation in Bergen County?

You should Contact:

Adult Protective Services

Telephone: 201-368-4200

Bergen County Board of Social Services

216 Route 17 North

Rochelle Park, NJ 07662

After Hours Hotline: 1-800-624-0275

<http://www.bcbss.com/>