

## **FREQUENTLY ASKED QUESTIONS ABOUT WILLS AND ESTATES**

The passing of a loved one is an emotionally difficult time under the very best of circumstances. The prospect of going through the probate or administration process only aggravates an already overwhelming situation. First and foremost, “probate” is not a dirty word. It is simply the proving of the validity of a will. Second, by planning ahead, having a will and other documents in order, and understanding the basics of the process, you can ease some of your fears and your fears for your beneficiaries and loved ones.

To that end, here are some Frequently Asked Questions about wills, estates and the local probate process.

### **Q. What is a will?**

When properly prepared, a will is a legal document that tells what you want done with your property when you die. It can tell how you want your property divided and who is to receive any money, property, or personal possessions. Your heirs will know exactly what you want done. Death is a trying and stressful time for those who survive. A will can be a comfort: if you have stated exactly what you want, your intentions will be known.

### **Q. What is a self-proving will?**

If the will is properly signed and witnessed before a notary public or an attorney, it becomes a self-proving will in New Jersey. However, if a notary public or an attorney did not witness the signing, a witness proof will be required to verify the signature of the decedent before the probate process can begin. This can involve the need to actually locate the witnesses and obtain affidavits from them, an often time-consuming and cumbersome process. Therefore, your will should contain self-proving language.

### **Q. Where should you keep your will?**

Your will should be kept in a safe place that is easily accessible in the event of your death and where the executor can find it. Tell the executor where it is located or give him or her a copy to keep. If a will is kept in a safe deposit box it might not be accessible on a weekend, late at night or without a joint holder of the box. Remember: if the decedent’s name is the only name on a safe deposit box, beneficiaries may need court intervention to gain access to the will.

### **Q. Upon the passing of the decedent, what does the survivor/executor do first?**

First, if the decedent was a veteran, you should visit the Casualty Assistance Office for information and assistance on services available to you as the surviving relative. Casualty Assistance can obtain the paperwork for surviving spouses to obtain their survivor’s pay and

report the death to the Veterans' Administration. They are located at Bldg 918, on Murphy Drive, telephone (732) 532-2040. Your personal funeral director can arrange for burial in a veterans' cemetery and military honors, if appropriate. The executor should also go to the Monmouth County Surrogate's Office to begin the probate proceeding. The Surrogate's Office is located at the Hall of Records (second floor), Main and Court Street, Freehold, New Jersey 07728; Phone 732-431-7330; Fax 732-303-7656; Office Hours: Mon.-Fri. 8:30-4:30. They have two satellite offices at Wall Township Public Library, Allaire and Baileys Corner Road, Wall Township; Hours: Wednesday 9:00-4:30 and Monmouth County Public Library, 1001 Broad St. (Route 35), Shrewsbury Borough; Hours: Thursday 9:00-4:30.

The Surrogate's Office can then issue Letters Testamentary and/or Surrogate's Certificates. These documents identify a person as the duly appointed executor and facilitate the conducting of the business of the decedent's estate.

**Q. What should the executor bring to the Surrogate's Office?**

The executor should bring the original will, death certificate with raised seal, and a completed information sheet. This sheet includes the names and addresses of closest next of kin, including any children of the decedent's deceased children. In circumstances where the decedent had no surviving spouse, children or grandchildren, the names of children of the decedent's deceased brothers or sisters (if any) may also be necessary. The executor may obtain a copy of the form at the Surrogate's Office or at the Legal Services Branch, Bldg 677 on Wilson Avenue.

**Q. How many Surrogate's Certificates will I need?**

Creating a list of all of the assets of the estate will help determine the number of certificates you will need to have issued by the probate clerk. These certificates are documents the executor delivers to various persons and agencies to conduct the business of the estate. An example would be: an executor delivering a Surrogate's Certificate to the Department of Motor Vehicles to change the title of an automobile.

**Q. Am I entitled to compensation as an executor/administrator?**

Yes! The executor/administrator is entitled to a corpus commission of 5% of the first \$200,000 of estate assets subject to administration, 3 \_ % on the balance of this amount up to \$1,000,000 and 2% for amounts exceeding \$1,000,000.

**Q. How do I contest a will or dispersal of the estate?**

A caveat must be filed with the Surrogate to temporarily prevent the probating of a will or granting of administration. Generally, you will need an attorney to represent you in this adversarial process.

## **Q. What are the tax laws in New Jersey?**

The revised New Jersey Transfer Inheritance Tax Act of 1985 provides for four classifications of beneficiaries.

Class A: includes spouses and children and provides that they do not pay any state inheritance tax. Also exempt under Class A are fathers, mothers, grandparents, an adopted child or children, any issue of any child or legally adopted child of a decedent, or a mutually acknowledged child or stepchild.

Class C: Brothers, sisters, daughters-in-law and sons-in-law are exempt for the first \$25,000. If the bequest is in excess of \$25,000 and up to \$1,100,000 there is an 11% tax. Then, up to \$1,400,000, the tax is 13%, and up to \$1,700,000, the tax is 14%. There is a 16% tax on any amount over \$1,700,000.

Class D: all others are exempt from taxation if the total amount is no more than \$499. There is a 15% tax on any amount up to \$700,000 and 16% for any amount beyond that.

Class E: includes bequests for charitable or public purposes to the State of New Jersey, an educational institution, church, hospital, orphans' asylum, public library, and certain other non-profit agencies. These are also exempt from inheritance taxes.

Again, these rates are subject to legislative change. To check from time to time, you may call the [New Jersey Inheritance Tax Office](#) at 609-292-5033.

## **Q. How soon must state inheritance taxes be paid?**

State inheritance taxes must be filed and the tax paid within eight (8) months after the decedent's death to avoid interest.

## **Q. Does the federal government tax an estate?**

Yes, the federal government does tax an estate. There is no tax due on any amount passed to your spouse. As of 2000-2001, the first \$675,000 of the estate that is passed to others is exempt from taxation and no tax form needs to be filed. When the estate exceeds \$675,000, it is recommended that an accountant or tax lawyer be consulted to help compute the correct tax owed. The applicable credit amount is scheduled to increase yearly, but that is subject to any legislative modification.

## **Q. What happens when two people's names are on one piece of property? How does the will handle that situation?**

When a husband and wife own a piece of real property equally together, they have a form of joint ownership, often called a tenancy by the entireties. Upon the death of one member of the marriage, the other automatically becomes the sole owner. Therefore, this item will not be distributed under the terms of the will (but it is included in the estate for tax computation!). Personal property may also be held under the special joint ownership of husband and wife, including items such as furniture, checking accounts, savings accounts or stocks and bonds.

Two or more people who are not married can generally hold property in one of two ways: as tenants in common or as joint tenants with the right of survivorship. When two people who are not married hold a piece of real or personal property jointly with the right of survivorship, this item becomes the property of the survivor on the death of the other title holder (outside the terms of the will). Once a piece of property (real or personal) is held by one person alone, then that person's will controls its disposition upon the death of the sole owner.

If the people hold the property as tenants in common, when one of the holders passes away, that person's "portion" goes to their heirs under the terms of the will.

**Q. Can one spouse disinherit the other spouse completely?**

No. As a general rule, if a married person dies domiciled in New Jersey, the surviving spouse has a right of "election", that is, to take an elective share of one-third of the estate, provided that (1) at the time of death the decedent and the surviving spouse had not been living separate and apart in different habitations or (2) had not ceased to cohabit as man and wife.

**Q. Can you disinherit your children completely?**

Yes.

**Q. What are the Surrogate fees the executor pays from the estate?**

The Probate fee is \$50.00. That is a base fee that includes: a will (2 pages), application, qualification of the executor, authorization, witness proof, judgment, letters and certificates. Additional pages of the will or additional documents are charged at the rate of \$3.00 per page. There are similar fees for the administration of a will. Clerks will determine the full fee amount at the time of application.

The Point of Contact for this subject in the CECOM Legal Office is Ms. Pamela McArthur, (732) 532-4760; DSN 992-4760.

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