

# A CITIZEN’S GUIDE TO FREQUENTLY ASKED QUESTIONS REGARDING WILLS, PROBATE, AND ESTATES

Pages 1 to 6

## ANSWERS TO YOUR QUESTIONS ABOUT PROBATE

Pages 7 to 10

### NICKI A. BURKE Surrogate



**35 Combined Years of Business, Probate and Intestate Working Experience**

#### **Are you prepared?**

- 1. Last Will & Testament
- 2. Power of Attorney
- 3. Living Will

**This informational booklet is issued as a public service by the Salem County Surrogate’s Court and is necessarily only an overview. There’s no law or requirement that you must have a lawyer prepare a will. However, the risks are great. One small overlooked detail can invalidate the entire document, nullifying your intentions. The statements pertain only to the laws of the State of New Jersey.**

## **THERE'S NO SUBSTITUTE FOR SOUND LEGAL ADVICE.**

### **WHAT'S A WILL?**

A will, when properly prepared, 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. A will doesn't have to be long. It can be brief.

A will names an executor. This is the person you want to carry out your affairs and dispose of your estate. If you don't name someone, the Surrogate must do so.

Anyone 18 years of age or over, or owning real property, should have a will. Whether your estate is large or small it's beneficial to have a properly drawn will.

### **WHY IS A WILL NECESSARY?**

Because a will spells out your specific intentions, your heirs will know exactly what you want done. Death is a trying and stressful enough time for those who survive. A will can be a comfort if you've stated exactly what you want; your intentions will be known.

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.

In the absence of a will, the Surrogate must appoint an administrator. To collect assets, pay outstanding debts and make distribution according to law a surety bond must be posted by the administrator. Then the administrator distributes the assets of the estate according to law.

### **WHAT SHOULD A WILL CONTAIN?**

1. List who the beneficiaries are be specific with the bequests, stating exact amounts.
2. If money or assets remain, name who is to receive the remainder in specific dollar amounts or percentages.
3. List alternative beneficiaries in case someone you've named, including your spouse, predeceases you. Should the bequest go to their heirs or to someone else?
4. Name an executor. He or she is the one who will carry out your wishes for your estate. Also name an alternate in case your first choice is not able to carry out the duties. It's also a good idea to let the executor know you have selected him or her, inform the executor where to find a copy of your will, or give the executor-designate a copy.
5. If you have minor children – under age 18 – name a guardian. You should discuss this decision with the guardian-designate prior to drawing up your will. This may be one or two people who would become responsible for the actual day to day care of your children and/or be responsible for any property the children may own or inherit.
6. Provide that your executor and guardian(s) will serve without bond.  
This will prevent the need to set aside money from your estate for that purpose.
7. Sign your will in the presence of two witnesses, who are at least 18 years old. New Jersey requires your signature and those of two witnesses for the will to be binding. If the will is signed and witnessed before a notary public it becomes a self-proving will in New Jersey, provided it is properly worded.
8. Burial instructions-state just what you want done with your remains, plans for funeral, if you want one, and burial. You should also note if burial arrangements already have been made and paid for, with whom, whether a cemetery plot has been purchased, and where. It's a good idea to keep copies of these pre-paid plans with your will.

## **WHAT HAPPENS IF YOU DON'T HAVE A WILL?**

If you die without a will, or "intestate," your assets and estate are divided accordingly to New Jersey's intestate laws. Whether an administrator must be appointed by the surrogate depends on the size of the estate. If there is a surviving spouse and the property in the name of the decedent does not exceed \$20,000 (if death occurred on January 18, 2016 or before), or does not exceed \$50,000 (if death occurred on January 19, 2016 or after), an Affidavit of Surviving Spouse may be issued by the Surrogate allowing the husband or wife to dispose of the property.

When there's no spouse and the property does not exceed \$10,000 (if death occurred on January 18, 2016 or before), or \$20,000 (if death occurred on January 19, 2016 or after), a close relative can be issued an affidavit to handle the disposition.

When the property exceeds \$20,000/\$50,000 for a spouse and \$10,000/\$20,000 for an heir (amount based on law existing at date of death as noted above), an administrator must be appointed by the Surrogate. A surety bond must be posted. The property is dispensed to the next of kin, according to law. Your property may not go to whom you had wanted it to. A favored niece or close, long-time friend, with whom you had lived, for example, may receive nothing if you don't include them among your beneficiaries in your will.

In the absence of a will, the law states who has right to your estate. Although it may be a clear-cut decision, (for example, naming your spouse or child your legal heir), this can take time because the Surrogate has to be sure there are no other claims. Meanwhile, final pay checks can be withheld; bank accounts that were not jointly held can be frozen, all pending the court's decision. This can cause hardship and distress.

If there are any challenges to the decisions, it can take more time, all creating more hardship and stress for your family, and all because you don't put your wishes in a will.

When there's no immediate family, your property may go to distant relatives or even escheat to the State.

## **WHERE SHOULD YOU KEEP YOUR WILL?**

Your will should be kept in a safe place that's easily accessible in the event of your death and where the executor can find it. Tell the executor where it is or give him or her copy to keep. If the will contains funeral and burial instructions, it's best that your family has access to it and knows your intentions when you die so they can make arrangements in accordance with your wishes.

## **HOW TO CHANGE YOUR WILL**

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

**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 there is no will, the laws of the State of New Jersey provide for the distribution of property to the heirs by intestate succession.

## **WHAT IS A TRUST?**

A Trust is often established for minor children when they receive a bequest. It is also done when there's a question of the ability of the beneficiary to handle the responsibility of the money or property.

A trust is created through an agreement or through your will and allows for a third person, known as trustee, to administer the bequest for your beneficiary. It can be for property or money in a bank account or other investment.

The person who administers the account is called a trustee.

## **DOES NEW JERSEY ALLOW LIVINGS WILLS?**

Yes. A Living Will (Advanced Health Care Directive) allows you to instruct your family and physicians about life sustaining efforts and equipment that you want or don't want to sustain your life. A copy of your living will should be kept in a safe place that is accessible in case of an emergency. Family members or those close to you should be told of your wishes and the living will, and knows where it is kept.

For more information on living wills, you may want to contact your local hospital, or physician.

## **POWER OF ATTORNEY**

A Power of Attorney is a formal written document which gives one person (agent) the power to act on behalf of another (principal).

A power of attorney is generally used when someone is unable for some physical or mental reason to carry out his or her affairs. With a power of attorney, a spouse, friend or family member can act on behalf of you, the principal. Often the need for a power of attorney is not considered until some incapacity overcomes a person. Then expenses and court proceedings are involved.

**The difference between a Power of Attorney and a Last Will & Testament simply put - a Will has no effect while you are alive and a Power of Attorney has no effect after your death. This is a very important distinction.**

Remember that the Power of Attorney is a legal document and therefore has to be carefully drafted. Accordingly, you should have one drafted by an attorney.

## **LETTER OF LAST INSTRUCTIONS**

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, personal representative, or 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:

- Statement as to where your **original** Will may be found.
- Names and addresses of those to be notified at death, and relationship of members of family and relatives.
- Instructions as to funeral and burial. You may wish to specify, for example, that, as a veteran you want to be buried in a national cemetery.
- Veterans records, including discharge papers
- 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.
- Where your membership certificates in any lodge or fraternal organizations which provides 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 saving; their location and where the passbooks are kept.
- A list of all other savings accounts; for example, credit union, deposits, etc., and passbook locations.
- A statement concerning any trusts and/or pension systems from which your estate may be entitled to receive benefits.
- A list of all stocks and bonds or other securities you own, and where they may be found.
- A statement of all real property owned by you with the location of deeds, mortgages, abstracts, and insurance policies for real property owned.
- Recent federal and state income tax returns.
- List of debts and names of creditors – with addresses.
- List of any gifts made and information needed for estate tax.
- A list of payments made, especially for funeral expenses.

## **FEES**

The diversified duties of the Surrogate's Court are set by acts of the State Legislature, as are the fees to be charged for various services provided. A list of those fees can be provided by the Surrogate upon request, or visit our website at [www.surrogate.salemcountynj.gov](http://www.surrogate.salemcountynj.gov).

## **COMMUNITY OUTREACH**

The Surrogate's Court Community Outreach Program offers residents, clubs and organizations of Salem County a comprehensive informational program that addresses issues related to the statutory and assigned functions of the office. Contact Nicki A. Burke at (856) 339-8621.

The Surrogate's Court provides the full range of our services to the physically challenged and individuals who are confined to their homes through our outreach program that literally brings the office to our county resident homes. Contact Nicki A. Burke at (856) 339-8621.

## **IMPORTANT PHONE NUMBERS TO KEEP HANDY**

Salem County Surrogate's Court	(856) 935-7510 - Ext. 8323
Salem County Office on Aging	(856) 339- 8622 <a href="mailto:scseniors@salemcountynj.gov">scseniors@salemcountynj.gov</a>
New Jersey Office on Aging Link:	<a href="http://www.aging.nj.gov">www.aging.nj.gov</a>
Medicare Interactive Link:	<a href="http://www.medicareinteractive.org">www.medicareinteractive.org</a>
Salem County Veterans Services	(856) 339-8603
US Dept. of Veterans Affairs	(800) 827-1000
Motor Vehicle Commission	(609) 292-6500 <a href="http://www.state.nj.us/mvc">www.state.nj.us/mvc</a>
New Jersey Motor Vehicle Information	(856) 935-8660
New Jersey Inheritance & Estate Tax Division	(609) 292-5033
Social Security Administration	(800)772-1213 <a href="http://www.socialsecurity.gov">www.socialsecurity.gov</a>
Federal Tax Id (EIN) Application	<a href="http://www.irs.gov/pub/irs-pdf/fss4.pdf">www.irs.gov/pub/irs-pdf/fss4.pdf</a> (To download the application – can be submitted online, fax or mail)
<a href="http://www.gov-tax.com">www.gov-tax.com</a> ; <a href="http://www.IRS.gov">www.IRS.gov</a>	(800) 829-1040
State of New Jersey	<a href="http://www.state.nj.us">www.state.nj.us</a>
Salem County Bar Association Lawyer Referral Service	(856) 935-5629 <a href="http://www.salemcountybar.org">www.salemcountybar.org</a>

Salem County Surrogate's Court  
Administration Building 2<sup>nd</sup> Floor  
94 Market Street – Salem, NJ 08079  
Phone: (856) 935-7510 ext. 8323 - Fax: (856) 339-9359  
E-Mail: Nicki.Burke@salemcountynj.gov  
E-Mail: surrogate@salemcountynj.gov  
Website: www.surrogate.salemcountynj.gov  
Facebook: Salem County Surrogate  
Twitter: @NickiABurke2

Should you have any questions, we at the Surrogate's Court welcome your call. We are located in the Administration Building 2<sup>nd</sup> Floor - 94 Market Street in Salem. Hours are from 8:30 a.m. to 4:30 p.m. Monday through Friday and the 1<sup>st</sup> and 3<sup>rd</sup> Tuesday of the month until 6:00 p.m. Pittsgrove satellite office location hours are by appointment only.

Sincerely,



**Nicki A. Burke**  
**Surrogate**

**ANSWERS TO YOUR QUESTIONS ABOUT PROBATE**

**A MESSAGE FROM YOUR SURROGATE**

## NICKI A. BURKE

Dear Citizen,

Whenever someone close to us dies, we are faced with a difficult period that is made even more difficult by the reality of certain legal procedures which need to be followed to insure a smooth and crisis-free settlement of the deceased person's estate. Recognizing this, the Salem County Surrogate's Court has produced this pamphlet as a basic guide for executors and administrators.

I 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. We are located in the Administration Building 2<sup>nd</sup> Floor at 94 Market Street in Salem. Office Hours are from 8:30 a.m. to 4:30 p.m. Monday through Friday and the 1<sup>st</sup> and 3<sup>rd</sup> Tuesday of the month until 6:00 p.m.

CALL (856) 935-7510 ext. 8323

Sincerely,



Nicki A. Burke  
Surrogate

The Surrogate is a constitutional official part of the judicial branch of government. Each county has a Surrogate's Court and the Surrogate is the Judge of that Court. He or she is elected for a term of five years, pursuant to the Constitution of New Jersey, by the people of the county in which he or she has jurisdiction. The Surrogate appoints a Deputy Surrogate who serves for a five year term.

### **What is meant by "Probate?"**

Upon the death of the testator or testatrix (maker of the will), the probate procedure can begin. 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 resided at the time of death. Although the process can begin at any time, the Surrogate cannot issue letters until the 11<sup>th</sup> day after the death of the decedent.

### **How do I begin the probate procedure?**

The executor, executrix or personal representative can be appointed and the will admitted to probate in most cases by going to the Surrogate's Court with the original will, certified death certificate, and, if the will is not self-proven, at least one of the witnesses who signed the will must prove the signature on the will.

### **How is an administrator appointed when there is no will?**

When there is no will, an administrator, also known as the personal representative is appointed by the Surrogate's Court. The surviving spouse has the first right to apply for the position of administrator; however, any heir of the decedent may be appointed. When one of several heirs seeks to be appointed administrator, all other heirs must renounce their right to be appointed administrator. In

most cases, a surety bond must be furnished to cover the value of the real and personal property in the estate.

### **What kind of information should I collect?**

The decedent's personal representative should make a list of all the next of kin of the person who died, along with their degree of relationship, addresses and ages.

### **What if the will is not properly executed?**

The Surrogate will advise the personal representative as to the proper procedure in order to allow the will to be admitted to probate. This procedure normally involves a formal hearing before a Judge of the Superior Court.

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

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

### **Are unpaid inheritance taxes a lien on property?**

Yes, to sell real estate, you will need to obtain "tax waivers" from the New Jersey State Transfer Inheritance Tax Bureau, and the waivers must be 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 be reported and may be transferred without a waiver.

### **How many Surrogates' Certificates "Shorts" will I need?**

A list of all of the assets of the estate should also be prepared to help determine the number of Surrogate's Certificates that must be issued by the Surrogate's Court.

### **When is the will admitted to probate?**

After all the proper forms have been completed and the requirements of the laws and rules have been met, the Surrogate then signs the judgment and will issue "Letters Testamentary."

The Surrogate is a constitutional official part of the judicial branch of government. Each county has a Surrogate's Court and the Surrogate is the Judge of that Court. He or she is elected for a term of five years, pursuant to the Constitution of New Jersey, by the people of the county in which he or she has jurisdiction. The Surrogate appoints a Deputy Surrogate who serves for a five year term.

### **What are Surrogate's Certificates used for?**

Surrogate's Certificates act as evidence of the authority of the personal representative (Executor, Administrator, Trustee) to act. These certificates are necessary to accomplish certain tasks such as transferring stocks, closing bank accounts, etc.

### **Is all this paperwork necessary even on small estates?**

There is a procedure whereby the assets of small estates can be transferred to the surviving spouse without the necessity of administration. The spouse files an affidavit stating, among other things, that the decedent had no will and that all of the real and personal assets of the decedent do not exceed \$20,000.00 (if death occurred 1/18/16 or prior) or \$50,000.00 (if death occurred 1/19/16 or later).

### **How about small estates with no surviving spouse?**

A similar procedure is used when the decedent dies without a will and leaves no surviving spouse but does leave next of kin. In such a case, if the total value of the real and personal property of the

decedent does not exceed \$10,000.00 (if death occurred 1/18/16 or prior) or \$20,000.00 (if death occurred 1/19/16 or later), one of the next of kin with the consent of the others may file an affidavit in lieu of administration.

### **What if there is no will?**

If the decedent dies without a will (intestate), there is a statute which determines to whom the decedent's property is to be distributed according to the degree of family relationship.

### **Is it necessary to send copies of the will to the beneficiaries?**

#### **Rule 4:80-6. Notice of Probate of Will**

Within 60 days after the date of the probate of a will, the personal representative shall cause to be mailed to all beneficiaries under the will and to all persons designated by R. 4:80-1(a)(3), at their last known addresses, a notice in writing that the will has been probated, the place and date of probate, the name and address of the personal representative 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 thereof.

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 by the terms of the will property is devoted to a present or future charitable use or purpose, like notice and a copy of the will shall be mailed to the Attorney General.

### **Am I entitled to compensation for acting as Executor or Administrator?**

Generally commissions on all corpus received by the fiduciary may be taken as follows:

- 5% of the first \$200,000.00 of all corpus received by the fiduciary;
- 3.5% on the excess over \$200,000.00 up to \$1,000,000.00;
- 2 % on the excess over \$1,000,000.
- 1% of all corpus for each additional fiduciary provided that no one fiduciary shall be entitled to any greater commission than that which would be allowed if there were but one fiduciary involved.

In addition to corpus commissions, commissions in the amount of 6% may be taken without court allowance on all income received by the fiduciary.

### **COMMUNITY OUTREACH**

The Surrogate's Court Community Outreach Program offers residents, clubs and organizations of Salem County a comprehensive informational program that addresses issues related to the statutory and assigned functions of the office.

### **SURROGATE HOME SERVICES**

The Surrogate's Court provides the full range of our services to the physically challenged and individuals who are confined to their homes through a "roving surrogate" who literally brings the office to their homes.

### **PITTSGROVE SATELLITE LOCATION**

### **SATELLITE HOURS ARE BY APPOINTMENT ONLY**

For the convenience of our eastern county residents, a satellite office has been opened at the following site where business is conducted by prior appointment only. To make an appointment for services at our satellite location, please call (856) 935-7510 ext. 8323.

Pittsgrove Township Municipal Building  
989 Centerton Road  
Pittsgrove, NJ 08318

Salem County Surrogate's Court  
Administration Building 2<sup>nd</sup> Floor  
94 Market Street – Salem, NJ 08079  
PHONE: (856) 935-7510 ext. 8323  
FAX: (856) 339-9359  
Email: [Nicki.Burke@salemcountynj.gov](mailto:Nicki.Burke@salemcountynj.gov)  
Web: [www.surrogate.salemcountynj.gov](http://www.surrogate.salemcountynj.gov)

### **Judicial Office**

**Established by the New Jersey Constitution, the Surrogate is judge and clerk of the Surrogate's Court and clerk of the probate part of Superior Court.**

### **OFFICIAL FUNCTIONS OF THE SURROGATE'S COURT**

- Probate of Wills
- Administration/Intestate Succession
- Affidavits of Spouse or Next of Kin
- Trusts
- Guardianships (Minors, Incapacitated Individuals)
- Conservatorship
- Management/Investment of Minors' Trust Funds
- Adoptions
- Contested Estate Litigation
- Maintain the Surrogate's Records from the early 1800's
- Film, Scan and Record All Surrogate and Superior Court Proceedings
- Aid in Genealogy and Title Research