

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

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Surrogate



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

Are you prepared?  
*Last Will & Testament*  
*Power of Attorney*  
*Living Will*

*This informational booklet is issued as a public service by the Salem County Surrogate's Court and is necessarily only an overview. Remember...if you want to prepare your own documents...the risks are great! One small overlooked detail can invalidate the entire document, nullifying your intentions. There's no substitute for sound legal advice.*

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, by prior scheduled appointment only.

CALL (856) 935-7510 ext. 8323

Sincerely,

***THERE'S NO SUBSTITUTE FOR SOUND LEGAL ADVICE – YOU ARE ALWAYS ADVISED TO SEEK THE ADVICE OF AN ATTORNEY-AT-LAW.***

### What is a Last Will & Testament?

A last will, & testament, 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 Last Will & Testament 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 Last Will & Testament Contain at the Very Least?

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 Last Will & Testament?

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 Last Will & Testament.

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 Make Changes to a Last Will & Testament.

The safe way to change your will - 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 last will & testament, 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.

#### Living Will, a/k/a an Advanced Health Care Directive

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.

**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 Instruction

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 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.

### 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 home services. Contact Nicki A. Burke at (856) 935-7510 ext. 8323.

### 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:cseiors@salemcountynj.gov">cseiors@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>
<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>

### ANSWERS TO YOUR QUESTIONS ABOUT PROBATE

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, raised seal death certificate, and, if the will is not self-proving, 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.

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, by appointment only.

## PITTSGROVE SATELLITE LOCATION

**\*\* SATELLITE OFFICE HOURS ARE CURRENTLY NOT OFFERED\*\***

**SATELLITE HOURS ARE BY APPOINTMENT ONLY BY CALLING (856) 935-7510 EXT. 8323**

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

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

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| <ul style="list-style-type: none"> <li>▪ Probate of Wills</li> <li>▪ Administration/Intestate Succession</li> <li>▪ Affidavits of Spouse or Next of Kin</li> <li>▪ Trusts</li> <li>▪ Guardianships (Minors, Incapacitated Individuals)</li> <li>▪ Conservatorship</li> <li>▪ Management/Investment of Minors' Trust Funds</li> </ul> | <ul style="list-style-type: none"> <li>▪ Adoptions</li> <li>▪ Contested Estate Litigation</li> <li>▪ Maintain the Surrogate's Records from the early 1800's</li> <li>▪ Film, Scan and Record All Surrogate and Superior Court Proceedings</li> <li>▪ Aid in Genealogy and Title Research</li> </ul> |
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