
A Citizen's Guide to Wills, Trusts, and Estates



Prepared by:
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The Office of the Monmouth County Surrogate



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When someone dies, their survivors may require the services of the Surrogate's office in order to settle various financial matters. It's the job of the Surrogate to preside over the filing of wills and appointment of executors or trustees named in the will. If there is no will, the Surrogate appoints an administrator to handle payment of any outstanding debts of the decedent and distribution of assets according to intestacy laws.

If disagreements arise over the decedent's assets and the conflict leads to court action, the Surrogate handles the filing of all court papers in her role of deputy clerk to the NJ Superior Court, Chancery Division, Probate Part.

This booklet is designed to answer many of your questions regarding the proper preparation of a will and the wisdom of having one, the disposition of property when there is no will, and various other matters relating to getting one's affairs in order. We hope that this material is helpful to you. For additional information, please visit our website at www.visitmonmouth.com/surrogate.

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Introuduction

A will is a legal document that upon a person's death explains just what the person wants done with his or her property and possessions. Preparation of a will can be quite simple and doesn't need to be expensive. The preparation of a will should not be put off until tomorrow when it might be too late.

Decisions about your wishes are best made when you are healthy and your mind is free and clear of stress and pressures.

No one likes to think about his or her own death. We'd like to think life goes on forever, but it doesn't. And so, to help those you leave behind, you should prepare for it.

Writing a will doesn't have to be forbidding. With a little knowledge, it can be made easier. Laws have been enhanced to protect those involved in the will and probate process.

This booklet is designed to answer some of the most frequently-asked questions in clear, concise language, and to guide you through the confusion that may follow the loss of a loved one.

There's a set procedure and chain of events for the filing of a will and transferring property. It doesn't have to be an intimidating experience. Having the correct information and the proper documents are the key.

This book is your guide. It's meant to point out the steps to take to set up a will and transfer property to your heirs and beneficiaries. But it's just that - a guide. 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. There's no substitute for sound legal advice.

The Surrogate and staff will gladly answer any questions and help you through the probate process when a death occurs.

What is 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 assets distributed and who is to receive any money, property or personal possessions. If you have minor children, it can also name a guardian to care for them in the event of your death.

A will doesn't have to be long. It can be brief, yet still include all of the elements of a valid will.

A will names an executor. This is the person you want to handle the task of settling your estate. A will should provide for a back-up executor, in case the first person named is unable or unwilling to serve.

Anyone 18 years of age or over, or owning real or personal 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 time for those who survive. A will can be a comfort and, if you've stated exactly what you want, your intentions will be known.

In the absence of a will, the Surrogate must appoint an administrator. A surety bond must usually be posted by the administrator before he can collect assets, pay outstanding debts, and make distribution of the remainder. A separate section later in this booklet will discuss the legal order of distribution if you die leaving no will, or "intestate".

What should a will contain?

1. Burial instructions state just what you want done with your remains, including plans for a funeral, if you want one, and burial or cremation. 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.

2. Specific bequests may be made to individuals or organizations, if you wish.

3. If money or assets remain, name who is to receive the remainder. There can be more than one person listed and amounts or percentages may be included.

4. 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?

5. Name an executor. He or she is the one who will carry out your wishes for your estate. Also name an alternate or two 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, and inform him where to find the original of your will, which will be needed for probate. You may also give the executor-designate a copy.

6. 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.

7. If you wish, 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.

8. 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.

Where should you keep your will?

The original signed 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 either the original or a copy to keep. The executor should be aware, however, that only the original of a will can be probated. If the will contains funeral and burial instructions, it's best that your family has access to it and knows your intentions before you die so they can make arrangements in accordance with your wishes.

If a will is kept in a safe deposit box, it might not be accessible on a weekend, late at night, or without the joint holder of the box.

When do you need a codicil?

A codicil is an addition or supplement to the original will that adds to or replaces part of the original will. When the will is offered for probate, so is the codicil.

Whenever there's change in your life, instead of drafting a complete new will, small individual changes can be made with a codicil. Some changes that might warrant altering your will are: marriage, divorce, birth or death of a child, death of a witness or executor, purchase or sale of real property, or a change in financial status.

Changes in the inheritance tax laws also might warrant changes in the will.

What are the procedures and the course of events for probating a will?

If there's a will, it should be filed with the County Surrogate's office by the executor no sooner than the 11th day after the date of death, along with an official copy of the death certificate.

If everything is in order, and the will is self-proving, it can be probated easily. If the will is not self-proving, one of the witnesses who signed the will must present proof of their signature.

Once the will is probated, the executor has 60 days to notify all the heirs and beneficiaries named in the will.

When there's no will, the Surrogate appoints an administrator. This process can be initiated on the 6th day after the date of death. If there is a surviving spouse, they would have the first right to serve as administrator. Otherwise, all other next of kin equally related to the deceased must renounce their right to serve in favor of the proposed administrator. A surety bond is required in order to protect creditors and other beneficiaries.

The Surrogate will issue Letters of Administration giving the administrator the necessary authority to withdraw money from bank accounts, pay outstanding bills, transfer property, and handle the other affairs of the estate. But this can take weeks, even months, and if the decision of the administrator or court is contested, sometimes even years.

When someone wants to contest a will or dispersal of the estate, he must file a caveat with the Surrogate to temporarily prevent the probating of a will or granting of administration.

What happens if you don't have a will?

If you die without a will, or "intestate," your assets and estate are divided according to New Jersey's intestacy laws. Whether an administrator must be appointed by the Surrogate depends on the size of the estate.

If there is a surviving spouse, or a domestic or civil union partner, and the property in the name of the decedent alone does not exceed \$20,000, an Affidavit of Surviving Spouse may be issued by the Surrogate allowing the husband or wife or partner to transfer ownership of the property.

When there's no spouse, domestic or civil union partner, and the

property does not exceed \$10,000, a close relative can be issued an affidavit to handle the disposition.

When the property exceeds \$20,000/\$10,000, an administrator must be appointed by the Surrogate. A surety bond may have to be posted. The property is dispensed to the next of kin, according to law, which may not reflect your wishes. A favored niece or close, long-time friend, for example, may receive nothing if you don't include them among the beneficiaries in your will.

In the absence of a will, the law states who has a 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 didn't put your wishes in a will.

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

Intestate succession of beneficiaries

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.

- I. If you die leaving a spouse or domestic or civil union partner and children who are also the children of the surviving spouse or partner, the spouse or domestic or civil union partner receives 100% of the estate.
- II. If you die leaving a spouse or domestic or civil union partner and children, some of whom are not the children of the spouse or partner, the spouse or domestic or civil union partner receives the first 25% (but not less than \$50,000 or more than \$200,000), plus one-half of the balance. Children of the decedent share all other assets of the estate.
- III. If you die leaving a surviving spouse or domestic or civil union partner and parent(s) but no children, the spouse or domestic or civil union partner receives the first 25 % (but not less than \$50,000 or more than \$200,000), plus three-fourths

of the balance. Surviving parent(s) receive all other assets of the estate.

- IV. If you die leaving children but no spouse or domestic or civil union partner, the children receive all assets divided equally among them. If you had a child predecease you who had children, your grandchildren receive their parent's share.
- V. If you die leaving a surviving spouse or domestic or civil union partner and children, all of whom are children of the spouse or domestic or civil union partner, and the spouse or partner has children by another relationship, the surviving spouse or domestic or civil union partner receives the first 25% (but not less than \$50,000 or more than \$200,000). Children of the decedent share all other assets.
- VI. If you die leaving a surviving spouse or domestic or civil union partner and only step-children, the surviving spouse or domestic or civil union partner receives 100% of the estate assets.
- VII. If you die without a surviving spouse or domestic or civil union partner who had children from a previous relationship and you have no other descendants, such as parents, siblings, grandparents, or other direct descendants, step-children receive 100% of the estate assets.
- VIII. If you die leaving no spouse, domestic or civil union partner, or children, your parents take all. If no parent survives, brothers and sisters receive all divided equally. If no brothers or sisters survive, the nieces and nephews receive all divided equally.

Recent changes to New Jersey law have granted domestic partners most of the same rights and partners in a civil union all of the same rights as married couples concerning inheritance if the decedent does not leave a will. However, neither domestic partnerships nor civil unions are recognized under federal law, which may affect entitlement to various federal benefits.

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 the trustee, to administer the bequest for your beneficiary. It can be for property or money in a bank account or other investment.

Does New Jersey allow living wills?

Yes. A living will allows you to instruct your family and physicians about life-sustaining efforts and equipment that you want or don't want used 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 know where it is kept.

For more information on living wills, you may want to contact the Monmouth County Office on Aging at 732-431-7450.

Power of Attorney

A power of attorney is a written document in which you authorize another person, an adult, to act on your behalf regarding your legal property, bank accounts and other legal matters.

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.

There's a way to avoid these problems. You can provide for an agent, someone such as a spouse, friend or family member, to act on your behalf should you be unable to.

There are two kinds of power of attorney: limited and general. The limited power of attorney gives a person authority to act for a specific purpose. An example is the sale of a house when the owner cannot be present. The agent with power of attorney can sign the legal papers in the principal's absence.

With a general power of attorney, the agent has authority to act on anything and everything for the principal if he becomes disabled or mentally incompetent.

A power of attorney automatically ends at the death or disability of the person who gave it. A durable power of attorney survives disability, but it too is revoked and ends at the death of the principal.

A will is necessary to transfer property after death. This office does not handle or process Powers of Attorney.

What is joint ownership?

When a husband and wife own a piece of property equally together, they have joint ownership. Upon the death of one, the other automatically becomes the owner.

When two or more persons, other than spouses, own real estate together, they are usually “tenants in common.” They own an undivided share of the property, unless their deed specifically states that they are “joint tenants with the right of survivorship and not as tenants in common.”

Usually property held in joint ownership goes to the surviving owner upon the death of the other. However, under tenants in common, the share passes to the heirs of the deceased.

Personal property may be jointly owned with the right of survivorship. Checking accounts, saving accounts, or stocks and bonds may be held jointly or as tenants in common.

Transferring ownership of stocks and bonds can be complex. Contact the “registered agent” or “transfer agent” for the proper procedure and necessary paperwork.

Changing the title of a motor vehicle in the decedent’s name or held jointly with the decedent will require a Surrogate’s Certificate. This will be issued when an executor or administrator is named by the Surrogate or upon issuance of an Affidavit of Surviving Spouse or Affidavit of Next of Kin.

All transfers of title need to be completed at a Motor Vehicle Commission Agency. They cannot be processed through the mail. Be sure to obtain the necessary certificate from the Surrogate’s Office before attempting to change the title to the vehicle.

Glossary

- Administration:** A person is appointed by the courts to take charge of the estate of a decedent who dies without a will.
- Beneficiary:** A person designated to receive money, property or benefits in a will.
- Bequest:** A gift of personal property by a will.
- Bequeath:** To dispose of personal property through a will.
- Caveat:** A formal notice given by someone to prevent the proving of a will or the granting of administration of an estate.
- Codicil:** An addition or supplement to an original will that adds to or deletes only a part of the will.
- Decedent:** A deceased person.
- Devise:** A gift of real estate through a will.
- Estate:** Property and possessions, everything a person owns.
- Executor/Executrix:** A person named in a will to carry out the wishes and intentions of the will, also known as a personal representative.
- Guardian:** A person entrusted by the law with the fiduciary care of a person, as a minor or mental incompetent, or of their property.
- Heir:** A person who inherits property from a deceased person.
- Intestate:** When a person dies without a will.
- Legatee:** A person who receives a gift under a will.
- Personal Property:** Intangible property, such as stocks, bonds or bank accounts, and tangible property, such as jewelry, furniture, a car.
- Probate:** Official proof of authenticity or validity of a will to gain access to an asset left solely in decedent's name.
- Real property:** Land and/or buildings.
- Surrogate:** The elected county official who oversees probate in the State of New Jersey.
- Tenants in Common:** Two or more persons owning individual interests in a single piece of property.
- Testator/Testatrix:** The person who makes a will.
- Trust:** Property owned or managed by a person for another.
- Trustee:** Person holding property in trust for another.
- Will:** A legal declaration of the manner in which a person wishes his or her estate to be divided after death.
- Witness:** Person who observes the signing of a document and attests to the signatures.

Check list

This is a recommended list of documents and necessary papers that could be essential for settling your estate when you die. Keep them in a safe place. If not kept together, then list for the executor of the estate where they can all be found. This can save time later on.

- Will
- Motor vehicle title
- Checking/Savings account numbers, names of banks and books
- Installment loans
- Safe deposit box key, location, number, how registered
- Birth certificate
- Social Security card or number
- Stocks and bonds
- Marriage/Divorce records
- Pension and annuity records
- Veterans records, including discharge
- Insurance policies/papers
- Union and/or company life and health benefits/insurance
- Recent federal and state income tax returns
- Real estate deeds
- Church or religious affiliation records

Fees

The fees charged for various services provided by the Surrogate's Office are set by state law. A list of those fees can be provided by the Surrogate upon request, or visit our website at www.visitmonmouth.com/surrogate.

I mportant resources:

Monmouth County Bar Association 732-431-5544

Monmouth County Surrogate..... 732-431-7330
www.visitmonmouth.com/surrogate

New Jersey Inheritance Tax Office 609-292-5033
www.state.nj.us/treasury/taxation

NJ Motor Vehicle Information 888-486-3339
www.state.nj.us/mvc

Ocean-Monmouth Legal Services 732-866-0020
www.lsnj.org/omls

Social Security Administration..... 1-800-772-1213
www.ssa.gov

Internal Revenue Service 1-800-829-1040
www.irs.gov

Veteran's Administration 1-800-827-1000
www.va.gov

Federal Tax ID# 1-866-816-2065
www.biztaxadvisor.com

MONMOUTH COUNTY SURROGATE **SATELLITE LOCATIONS**

The Monmouth County Surrogate provides three satellite locations around the county where individuals have the opportunity to access many of our services. We highly recommend that you schedule an appointment if you plan to visit one of these offices. While walk-ins are always accepted, those who have scheduled appointments take precedence.

MIDDLETOWN TOWNSHIP

Middletown Township Public Library
55 New Monmouth Road
Every Tuesday from 9:00 AM to 4:30 PM

WALL TOWNSHIP

Wall Township Public Library
Allaire and Bailey's Corner Roads
Every Wednesday from 9:00 AM to 4:30 PM

OCEAN TOWNSHIP

Ocean Township Public Library
701 Deal Road, Oakhurst
Every /Thursday from 9:00 AM to 4:30 PM



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