

Wills, Estates and Probate

A Citizen's Guide

Monmouth County, New Jersey



By Maureen T. Raisch, Surrogate

**A Publication of
The Office of the Monmouth County
Surrogate's Court**

Freehold, NJ 07728



The Surrogate's Court is a court of limited jurisdiction with responsibilities, including matters dealing with probate and reviewing and assisting with the documentation concerning guardianships and adoptions.

In addition, the Surrogate is the record custodian of all estates, Wills, guardianships, and adoptions dating back to the late 1700s and the custodian of funds awarded to minors through settlements, inheritances, or as beneficiaries of life insurance proceeds. The office is currently managing over 400 accounts for minors totaling more than \$21 million in the Surrogate's Intermingled Trust Fund.

The Surrogate's Court was established by the New Jersey Constitution. It is governed by state statutes as the court in each county and is a branch of the Superior Court of New Jersey, in the Chancery Division. The Surrogate is a Constitutional Officer who is elected to the position every five years. The Surrogate serves as Deputy Clerk of the Superior Court, Chancery Division, Probate Part, and Chancery Division, Family Part for adoptions, as well as Judge of the Surrogate's Court.

MONMOUTH COUNTY
OFFICE OF THE SURROGATE

MAUREEN T. RAISCH
SURROGATE



Dear Monmouth County Resident,

This guide is designed to answer many of your questions regarding the proper preparation of a Will and the wisdom of having one, disposition of property when there is no Will, the probate process, and various other matters relating to putting one's affairs in order.

When someone dies, their survivors may require the services of the Surrogate's Office 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 the payment of any outstanding debts of the deceased and the 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 documents or proceedings in the role of Deputy Clerk to the New Jersey Superior Court, Chancery Division, Probate Part.

You may want to keep this guide and other important documents with your Will because it may be helpful to your executor and family when handling your estate. A useful glossary of words and terms used throughout this guide is provided on page 14.

I hope the information in this guide inspires you to create a proper Will or helps you to amend an existing Will. The Surrogate's Office and staff are ready to provide guidance for you, your relatives, and heirs to navigate the probate process with or without a Will.

All the best,

A handwritten signature in blue ink that reads "Maureen T. Raisch".

Maureen T. Raisch
Monmouth County Surrogate

Office of the Monmouth County Surrogate
www.visitmonmouth.com/surrogate

TABLE OF CONTENTS

SECTION 1 - WILLS AND ESTATES

Wills	02
Types of Wills	02
Items to include in a Will	03
Codicil – changes or amendments	04
Storing a Will	04
Checklist of Important Documents	05
Digital Checklist of Accounts	06

SECTION 2 - INFORMATION AND INSTRUCTIONS FOR PROBATING AN ESTATE

Probate	08
Probate with a Will	08
No Will Exists - Intestate	08
Administrator	09
Probate without a Will - Intestate	09
Asset distribution for an estate without a Will - Intestate	10
Fees – Surrogate Office Fees 22A:2.2:30	10

SECTION 3 - ADDITIONAL IMPORTANT DOCUMENTS TO CONSIDER COMPLETING

Advance Directive	11
Durable Power of Attorney for Healthcare	11
Living Will	11
Trusts	11
Power of Attorney	11

SECTION 4 - IMPORTANT RESOURCES

Agencies, Services, and Contacts	13
Glossary	14
Monmouth County Surrogate Office Location	19

SECTION 1 - WILLS AND ESTATES

Wills - A Will is a legal document that expresses a person's wishes as to how their estate, which includes but is not limited to assets, money, real estate, and family belongings, is distributed after their death. Anyone 18 years of age or over should have a Will. If you have minor children, the Will can also name a guardian to care for them in the event of your death. It is therefore very important to have a Will to protect your children and to address any concerns for your family, specific interests, and the distribution of property. Without a Will, the State of New Jersey will determine who receives your assets through the laws of intestacy.

Types of Wills - There are no laws or requirements that you must have a lawyer prepare a Will, however, the risk is great. One small, overlooked detail can invalidate the entire document, nullifying your intentions. There's no substitute for sound legal advice. If you would like to know more information about creating a Will that fits your specific needs and requirements you can contact an estate planning attorney in New Jersey.

You will find many types of Wills exist. These include basic Wills, simple Wills, standard Wills, Self-Proving Wills, and Handwritten or Holographic Wills.

A Will is self-proving, meaning that language was included in the Will that allows the document to prove itself, and eliminates the need for your witnesses to appear before the Surrogate to have the Will admitted to probate. It also eliminates the need for anyone to appear before the Superior Court if the witnesses have died or cannot be located.

Below is a description of a Self-Proving Will.

A Self-Proving Will must be a written document that is properly worded. It must be signed and dated by the person making the Will (testator) and two witnesses at the time the Will is being notarized. The Will includes an Acknowledgement and Affidavit Relating to Execution of the Will attached to the Will and contains an attestation clause that declares it is the last will of the person making the Will.

SECTION 1 - WILLS AND ESTATES CONTINUED

Items to include in a Will

- Wills must designate an executor. This individual is responsible for carrying out the wishes of your estate. An alternate executor should be named if the first-named executor is incapable of serving. It is also a good idea to let the executors know they were selected and advise them where to find the original Will because the original Will is needed for probate.
- All beneficiaries should be specifically named with defined amounts or percentages included for receiving money, property, or benefits. Alternate beneficiaries should be included in the event a designated beneficiary dies before the person making the Will dies. A Will may also include bequests which are specific gifts of personal property to individuals or organizations.
- If you have minor children, under the age of 18, a guardian should be named for those children. You should discuss this decision with the guardian designate before drawing up your Will. This may be one or two people who would become responsible for their care including the actual day-to-day care of your children as well as being responsible for any property the children may own or inherit.
- You can also provide a statement in your Will that your executor(s), the trustee(s), or guardian(s) will serve without bond. Without bond means, they are not required to post a certain sum of money with the court to ensure they do their job. Without this statement, a bond may be required.

A bond is placed to protect the estate from losses due to the executor's abuse. Many people name a person they trust as their executor. Including this statement may ease the extra burden on their responsibilities or the need to set aside money from your estate for this purpose.

SECTION 1 - WILLS AND ESTATES CONTINUED

Codicil - Changes or amendments - Once the Will is executed, any changes to the document can be done through a separate document called a codicil or by creating a new Will. Markings, cross-outs, or handwritten changes are not allowed on the original Will. If these exist on the Original Will, the Surrogate will be unable to act, forcing the probate process to be sent to the Superior Court.

A codicil is an addition or supplement to an original Will. It's a separate document that can add or replace parts of the original Will. In some cases, amending a Will is easier and less involved than re-drafting an individual's entire estate.

A codicil is often used when the person making the Will undergoes some change in their life. Some examples that may warrant a codicil are marriage, divorce, birth or death of a child, replacing an executor, purchase or sale of real property, retirement, financial status, or adjustments in the State or Federal inheritance tax laws.

It's a good idea to review your Will periodically to evaluate the need for a codicil or a new Will. You may have multiple codicils throughout your life for different changes. In some cases, it may benefit you to create a new Will that combines all the changes to simplify and clarify the document.

Storing a Will - Only the original signed Will can be probated without a Superior Court order, and its location and availability are key factors in where to store your Will.

The original signed Will should be kept in a safe place that's easily accessible in the event of your death. Make sure your executor knows where your original Will is located and has access to the document. If a Will is kept in a safe deposit box, for instance, it might not be accessible on a weekend or late at night.

SECTION 1 - WILLS AND ESTATES CONTINUED

Checklist of Important Documents - This is a recommended list of documents and important papers that could be essential for settling your estate or resolving issues for your survivors when you die. Since this information is sensitive, choose a secure digital and/or physical location to keep them.

Original Will, spouse's Will

Accountant contact information

Adoption papers

Attorney contact information

Birth certificate

Bank account numbers, Branch location, and types of accounts

Church or religious affiliation records

Credit Card information

Educational accounts, 529 tuition plans

Financial Advisor contact information

Health benefits

Installment loans

Insurance policies/papers – life, homeowners, auto, medical, etc.

Investments- brokerage accounts, stocks, bonds, annuities, retirement accounts

Loans-auto, mortgage, personal, student

Marriage/Divorce records/pre or postnuptial agreement

Motor vehicle title

Pension and annuity records

Physician contact information

Real estate deeds

Safe, location, and combination

Safe-deposit box key, location, number

Social Security card or number

Storage Unit information

Tax returns- federal and state

Time Share agreements

Trust agreements

Union and company life insurance

Veteran records, including discharge paperwork

SECTION 1 - WILLS AND ESTATES CONTINUED

Digital Checklist of Accounts - Providing access to your digital accounts will be more convenient and can help to save your family or executor time. Be sure to update this information frequently, especially any password changes. It is vital and highly recommended that you provide this critical information to at least one trustworthy person or you can outline how this information can be accessed when it is needed. This will allow your executor/administrator the ability to transfer digital assets to your designated beneficiary.

Here is a list of some of the digital assets to include.

Detailed information should include your account number, log-in, and password, username, hints, security words, and business or brand names.

Cellphone

Computers -personal and business

Cloud Storage

Digital assets – virtual real estate, fashion, goods, etc.

Digital money accounts/digital currency-cryptocurrency

Emails – personal and business

E-Z pass

Gaming, role-play games, and/or gambling accounts

Home security system

Laptop/tablet

Media storage accounts – Apps, audiobooks, Dropbox, music, photos, videos

Rewards/frequent flyer programs

Social Media accounts – personal and business

Voicemail

SECTION 2 - INFORMATION & INSTRUCTIONS FOR PROBATING AN ESTATE

Probate

- Probate is the term for a legal process in which a Will is reviewed to determine whether it is valid, authentic, and meets all the statutory requirements.
- Probate also refers to the person who has the authority to access assets, pay debts of the estate and make a distribution to the beneficiary of the estate that they have been appointed to represent.
- Once the probate application is complete, the court appoints either an executor named in the Will or an administrator if there is no Will.

Probate with a Will - Upon the death of a loved one with an original Will, there are certain steps to follow:

1. Locate the deceased person's original Will.
2. The named executor, included in the original Will, is responsible for filing the Will and must bring the following to the Monmouth County Surrogate's Court.
 - The original Will with any Codicils
 - An original death certificate with a raised seal
 - List with the full names and current addresses of all, first bloodline, next of kin
3. A probate clerk will review and obtain any additional information on the estate and will be available to answer any questions.
4. Once the Will is proven to be valid and accepted as the true last will for the deceased, an executor will be officially appointed by the Surrogate. Documents will be provided to the executor which will give them the legal power to act on behalf of the deceased.

No Will exists - Intestate - If an individual dies without a Will, they are said to have died "intestate". An intestate estate is also one where the Will presented to court has been deemed to be invalid. Even though a person dies without a Will (intestate), someone must still do the work for the estate's affairs and distribution of assets. The court will appoint an administrator who fulfills the same role as an executor.

SECTION 2 - INFORMATION & INSTRUCTIONS FOR PROBATING AN ESTATE CONTINUED

Administrator - The laws in the State of New Jersey define who has the first right to apply to the court as the administrator. It is the duty of the close relative to apply to the Surrogate of the county in which the deceased resided at death. Below lists the priority of next of kin according to state statute.

Spouse

Adult children of the decedent

Guardian of the minor issue first entitled if no surviving spouse or adult children

Parents of the deceased

Brothers and sisters

Grandparents

Aunts and uncles

Cousins

Stepchildren

A person may renounce the right to serve as the administrator of the estate, which does not disqualify their right to inheritance.

If there are any challenges to the decisions, it can take more time, creating more hardship and stress for family members. When there is no immediate family, property may go to distant relatives or even revert to the State.

Probate without a Will - Intestate - The following must be brought to the Monmouth County Surrogate's Court:

1. An original death certificate with a raised seal
2. The total gross value of the estate assets. For real estate, a current tax bill is required
1. A list of estate debts
2. Names and addresses of, first bloodline, next of kin

A probate clerk will review and obtain any additional information on the estate. In addition, they will be available to answer any questions.

Once an administrator for the estate is officially appointed, the Surrogate's Court will issue documents confirming that the estate has been probated and an administrator has been appointed with authority to act on the estate's behalf.

SECTION 3 - ADDITIONAL IMPORTANT DOCUMENTS TO CONSIDER COMPLETING

Advance Directive

- Durable Power of Attorney for Healthcare
- Living Will

New Jersey has two kinds of advance directives, a Durable Power of Attorney for Healthcare and a Living Will. It's called an "Advance Directive" because you are making the decisions before you need care. These are legally binding documents that tell your doctors what medical care you want and don't want if you are no longer able to make decisions yourself.

For more information and to obtain these forms, please go to the State website at [www.State.nj.us/health/advancedirective/ad/what-is/Department of Health | Advance Directive | What is Advance Directive? \(state.nj.us\)](http://www.State.nj.us/health/advancedirective/ad/what-is/Department%20of%20Health%20|%20Advance%20Directive%20|%20What%20is%20Advance%20Directive%3F%20(state.nj.us))

Trust - A trust is an agreement that allows for a third party, known as the trustee, to administer another's property or bequest for the beneficiary. A Trust can be created independently or through a Will. It can be for property or money in a bank account or other investments. 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 often established for minor children when they receive a bequest.

For more information on understanding Estates and Trusts visit www.state.nj.us/treasury/taxation/pdf/pubs/tgi-ee/git12.pdf
[Estates and Trusts](#)

Power of Attorney/ Durable Power of Attorney

A power of attorney is a written document in which an individual authorizes another to act on another's behalf regarding legal property, bank accounts, and other legal matters. A power of attorney is often used when someone is unable to carry out his or her affairs, due to incapacity or is absent from the vicinity for an extended time. A power of attorney automatically ends at the disability or death of the individual who authorized it. A Durable Power of Attorney survives disability, but it is also revoked and ends at the death of the grantor.

SECTION 4 - IMPORTANT RESOURCES

Agencies, Services, and Contacts

The Social Security Office, Veteran's Administration, and employer should be contacted to ascertain any benefits due to the decedent

Federal Tax ID#	www.irs.gov
Estate Identification Number (Estate ID#)	
ID#'s may be needed to transfer bank accounts or stocks	
Internal Revenue Service	800-829-1040 www.irs.gov
Monmouth ACTS	(732) 683-2102
Assisting Community Through Services	
Access to services in mental health, addiction, aging	
Monmouth County Bar Association	732-431-5544 www.monmouthbarassociation.com
Monmouth County Division on Aging, Disabilities and Veteran Services	732-683-8675
Monmouth County Office on Aging	(732) 431-7450
NJ Department of Military and Veteran Affairs:	www.state.nj.us/military/
New Jersey Inheritance Tax Office	609-292-5033 www.njtaxation.org
NJ Motor Vehicle Information	609-292-6500 www.state.nj.us/mvc
Social Security Administration	800-772-1213 www.ssa.gov
South Jersey Legal Services	800-496-4570 www.lsnj.org
Veteran's Administration	800-827-1000 www.va.gov

GLOSSARY

Administrator/Administratrix: A person or institution appointed by the courts to manage and distribute the estate of the person who dies without a Will.

Attestation: A legal acknowledgment of the authenticity of a document and a verification that a proper process was followed. The confirmation that something is true, genuine, or authentic.

Beneficiary: A person named 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 filed with the Surrogates Court by someone to prevent the proving of a Will or the granting of administration of an estate.

Codicil: An addition or supplement made to change or add provisions to a Will

Contract: A legally enforceable agreement

Decedent: A deceased person.

Devise: A gift of real estate through a Will.

Estate: Property and possessions, everything a person owns.

Escheat: Property reverting to the State for want of any legal heir.

Executor/Executrix: A person or institution 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 incapacitated, or of their property.

Heir: A person who inherits property from a deceased person.

Intestate: When a person dies without a valid Will.

Legatee: A person who receives a gift under a Will.

GLOSSARY CONTINUED

Personal Property: Intangible property, such as stocks, bonds, or bank accounts, and tangible property, such as jewelry, furniture, and a car.

Probate: Official proof of authenticity or validity of a Will to gain access to an asset left solely in the decedent's name.

Real property: Land and/or buildings.

Surrogate: An elected Constitutional Officer who oversees probate, and acts as clerk in the settlement of estates, guardianships, and adoptions. The custodian of funds awarded to minors and custodian of all such records.

Surrogate Short Certificate: Legal document issued by the Surrogate's Court confirming that the Will has been probated, and an Executor/Administrator has been appointed.

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 held or managed by one person for the benefit of another.

Trustee: Person or institution holding property in trust for another.

Will: A legal declaration of the manner in which a person wishes his or her estate to be distributed after death.

Witness: Person who observes the signing or acknowledgment of a Will by the person who makes the Will, and who signs the Will attesting to the observation.

MONMOUTH COUNTY SURROGATE OFFICE LOCATION

MAIN OFFICE - FREEHOLD

Hall of Records
One East Main Street
Freehold, NJ 07728

Phone: (732) 431-7330

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Surrogate@co.monmouth.nj.us
visitmonmouth.com/surrogate

Office Hours

Monday through Friday 8:30 a.m. to 4:00 p.m.

To help expedite the process, the Will, death certificate, and a Decedents Information Form, which is found on our website, can be submitted before arriving to the office. This will allow time to prepare the necessary documentation for you in advance.



**Office of the Monmouth County Surrogate
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