

# Probate And Estate Administration In New Jersey

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The probate process in New Jersey is relatively easy, inexpensive, and streamlined compared with other states such as New York or California. Under New Jersey law, probate requires that the named executor bring a death certificate and the original Last Will and Testament of the decedent to the surrogate's office in the county where the decedent was domiciled (where the decedent resided) at the time of death. However, by statute the executor must wait 10 days after the date of death before visiting the surrogate's office to file for probate.

In most counties the surrogate will assist the executor in completing the necessary paperwork for the executor to receive "Letters Testamentary," which is the official court record appointing the executor to administer the estate of the decedent. Letters Testamentary will usually be issued to the executor during the executor's initial meeting with the surrogate. During that meeting the executor must be prepared to give the names, addresses, and relationship to the decedent, of the beneficiaries named in the Will. It may be prudent for the executor to retain an attorney before scheduling a visit with the surrogate's office to make sure the visit and the necessary paperwork are handled smoothly. It is often unnecessary for the attorney to accompany the executor to the surrogate's office.

Within 60 days after receiving the Letters Testamentary, the executor must send a Notice of Probate, which is a letter prepared by the executor or the estate's attorney (sent by certified mail), informing the beneficiaries that the Will of the decedent has been probated, providing the name and address of the executor, the date and place of probate, and stating that a copy of the Will is available upon request. The executor must send proof of the mailing of the Notice of Probate to the surrogate's office.

During the 60-day period after receiving the Letters Testamentary, the executor should begin the process of estate administration, which will include, but not be limited to, locating, gathering, and safeguarding the assets of the decedent, taking an inventory and having the assets appraised, determining the nature and extent of the decedent's debts, applying to the Internal Revenue Service for

a tax identification number for the estate, and setting up an estate checking account.

If the executor has retained an attorney to assist with estate administration, the attorney should notify the executor in writing of: the executor's duties owed to the estate, to the beneficiaries, and to the court; upcoming deadlines regarding income, estate and inheritance tax return filings and claims against the estate; time sensitive elections available to the surviving spouse, if any, (e.g. spousal elective share), and to beneficiaries for disclaimers; tax elections available to the executor that can have a significant impact on the estate and beneficiaries' tax liabilities; and other estate issues that must be addressed in a timely manner by the executor. The attorney can provide a checklist of the executor's duties and a timeframe for adhering to them.

The executor must always be mindful that he or she is under a duty to settle and distribute the estate in accordance with the terms of the probated Will and applicable law as expeditiously and efficiently as possible consistent with the best interests of the estate. N.J.S.A. 3B:10-23. The executor, however, should always postpone any distributions to beneficiaries until at least nine months have passed since Letters Testamentary were issued to the executor to allow for creditors to present claims against the estate. N.J.S.A. 3B:22-4. Otherwise, the executor could be held liable for creditors' claims if the executor distributed estate assets before the end of the nine month period.

When making distributions of the estate assets to beneficiaries under the Will, the executor should always have each beneficiary sign a Refunding Bond and Release and return it to the executor before making the distribution to that beneficiary. The Refunding Bond serves a two-fold purpose. First, by signing the Refunding Bond the beneficiary is agreeing to refund to the executor the beneficiary's proportionate share of any debt that may arise in the future if there are no estate assets to pay the debt. Second, the Refunding Bond releases the executor from any liability with regard to the distribution to the beneficiary.

Finally, the attorney will help determine whether the executor should file a formal or informal accounting of the transactions that occurred during the executor's administration of the estate. In the majority of cases in New Jersey, the executor files an informal accounting because it is simpler and less costly than filing a formal accounting requiring judicial supervision and approval, and most estates are

settled without dispute among the beneficiaries. Stated simply, an informal accounting sets forth the assets received by the executor and their date of death values, records the estate's expenses of administration including payment of the decedent's last illness, funeral expenses, any estate or inheritance taxes, distributions to beneficiaries and the executor's commission, and indicates the remaining assets at their current values for final distribution to the beneficiaries.

If all the beneficiaries accept the informal accounting, they will sign waivers, after having the opportunity to review the informal accounting, and release the executor from any further liability. Before making final distributions, the executor will have the beneficiaries sign and return to the executor a Refunding Bond and Release for the final distribution. The executor will then file the signed Refunding Bonds and Releases with the surrogate. If any beneficiary refuses to sign the Refunding Bond, the executor may petition the court for full release as fiduciary of the estate. After making final distributions, closing the estate accounts, and filing final tax returns for the estate, paying any required taxes due on behalf of the estate, and, where appropriate, receiving estate tax closing letters, the estate may then be closed. The whole process can take anywhere from 12 or 18 months to several years depending on the size and complexity of the estate.