

DYING WITHOUT A WILL

Intestate Succession -

When no Will exists, Real and Personal property is not distributed according to the decedent person's desires. Rather, it is distributed according to the statutes of New Jersey.

How will your property be divided if you have no Will? If you die without leaving a Will and are a resident of New Jersey, the State law provides the manner for distributing your property. Your net estate remaining after deduction of debts, taxes, family exemptions, etc., would be distributed under the Statutes governing Decedent's Estates and, in the case of most common occurrence, the heirs who would receive such property are as follows:

Property owned jointly by husband and wife is automatically owned by the survivor. The following charts show the distribution of separately owned property. (Revised February 27, 2005) according to the Middlesex County Surrogate, See <http://www.co.middlesex.nj.us/surrogate/yourwill.asp#dyi>

The Chart below shows how an Estate is distributed in New Jersey if you do not leave a Will.

IF YOU DIE LEAVING:

Survivors (Heirs)	New (2004) UPC
Spouse and parent(s), but no children	Spouse: the first 25% (but not less than \$50,000 nor more than \$200,000) plus three fourths of the balance Parent(s): All other estate assets
Spouse and children of Decedent, all of whom are also children of spouse (and spouse has no children by any other relationship)	Spouse: 100% of estate Children: nothing
Spouse and children of Decedent, some of whom are not children of spouse	Spouse: the first 25% (but not less than \$50,000 nor more than \$200,000) plus one half of the balance Children of the Decedent: all other estate assets
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are also children of spouse (and spouse has children by another relationship)	\$50,000 nor more than \$200,000) plus one half of the balance Children of the Decedent: all other estate assets
Spouse and stepchildren (children of spouse who are not Decedent's children)	Spouse: 100% of estate Stepchildren: nothing
Children of spouse (stepchildren), but no descendants, parents, descendants of parents or descendants of grandparents	Stepchildren: 100% of estate

Note: shares of predeceased children pass to descendants by representation. The new rules on intestacy say that the decedents inherit "*per capita, by generation*" rather than "*per stirpes*." Source: <http://www.co.middlesex.nj.us/surrogate/yourwill.asp#dyi>

However, the State of New Jersey takes your property if you leave no wife or husband; child or its descendants; parent; brother or sister or their descendants; grandparent; or uncle or aunt or their children; or their grandchildren or stepchildren.

NOTE: Any person who fails to survive the decedent by 120 hours is deemed to have predeceased the decedent for purposes of intestate succession.

APPOINTMENT OF ADMINISTRATOR OR PERSONAL REPRESENTATIVE

When there is no Will, an administrator, administratrix, or personal representative is appointed by the Court. Any close relative may be appointed.

For an individual or a bank to be appointed administrator or personal representative, all other heirs must renounce their rights. In most cases, a surety bond must be furnished by paying a premium to a surety company for signing this bond.

If all heirs cannot agree on who will serve as an administrator, then the heir requesting to be appointed as administrator must have their attorney file a Complaint and Order to Show Cause to request the court appoint you as administrator.

MINIMUM DUTIES OF ADMINISTRATOR

ACCORDING TO THE MIDDLESEX COUNTY SURROGATE WEBSITE, THERE ARE MANY RESPONSIBILITIES OF THE ADMINISTRATOR

- The **ADMINISTRATOR** is responsible for determining and marshaling all assets of the estate. Your attorney will help. An estate checking account is opened from which bills are paid. It may be necessary to secure a Federal ID number for the estate. You can call the IRS AT 800-829-1040 for an ID number.
- The Administrator is responsible for all debts, last illness expenses, inheritance and estate taxes, and administrative expenses from the decedent's assets.
- The Administrator is responsible for filing appropriate State and Federal tax forms as applicable, and forwarding any tax payments due. Your attorney will help.
- The Administrator shall prepare an accounting of the estate assets and disbursements and proposed distribution, which accounting may be proved informally by each beneficiary/heir acknowledging his approval of same. In the alternative, a formal Accounting, Complaint and Order to Show Cause must be filed in the Superior Court
- The Executor has the obligation to distribute the net estate in a timely manner, in accordance with the terms of the will. The Administrator distributes in accordance with the intestate laws of the State of New Jersey
- Prior to the distribution, each beneficiary shall execute a Refunding Bond and Release prepared by the attorney. Upon receipt of the executed document, the Administrator issues payment. The original refunding Bonds and Releases are filed with the Surrogate. If every beneficiary does not sign the Refunding Bond and Release, a formal Accounting, Complaint and Order to Show Cause must be filed in the Superior Court
- The Administrator is required by NJ law to initiate a child support enforcement order for any beneficiary receiving in excess of \$2,000.00, prior to distribution of any money to the beneficiary. The search shall be conducted by a private judgment search company used by your attorney that will verify results.

ADMINISTRATOR OF A PROBATE ESTATE- OTHER DUTIES AND RESPONSIBILITIES

The procedures in an Estate Administration may take from six months to several years, and a client's patience may be sorely tried during this time. However, it has been

our experience that clients who are forewarned have a much higher tolerance level for the slowly turning wheels of justice.

The following is a portion of the details you may wish to inform clients who are administrators after you have been retained:

Some of the Duties of the Administrator in Probate Estate Administration

1. Conduct a thorough search of the decedent's personal papers and effects for any evidence which might point you in the direction of a potential creditor;
2. Carefully examine the decedent's checkbook and check register for recurring payments, as these may indicate an existing debt;
3. Contact the issuer of each credit card that the decedent had in his/her possession at the time of his/ her death;
4. Contact all parties who provided medical care, treatment, or assistance to the decedent prior to his/her death;

Your attorney will not be able to file the NJ inheritance tax return until it is clear as to the amounts of the medical bills. Medical expenses can be deducted in the inheritance tax.

Under United States Supreme Court Case, Tulsa Professional Collection Services, Inc., v. Joanne Pope, Executrix of the Estate of H. Everett Pope, Jr., Deceased, the Administrator/ Personal Representative in every estate is personally responsible to provide actual notice to all known or "readily ascertainable" creditors of the decedent. This means that is your responsibility to diligently search for any "readily ascertainable" creditors.

Other duties/ Administrator to Do

Let's review the major duties involved-

In General. The administrator's job is to (1) administer the estate--i.e., collect and manage assets, file tax returns and pay taxes and debts--and (2) distribute any assets or make any distributions of bequests, whether personal or charitable in nature, as the deceased directed (under the provisions of the Will). Let's take a look at some of the specific steps involved and what these responsibilities can mean. Chronological order of the various duties may vary.

Probate.

An employer identification number ("EIN") must be obtained for the estate; this number must be included on all returns and other tax documents having to do with the estate. The administrator should also file a written notice with the IRS that he/she is serving as the fiduciary of the estate. This gives the administrator the authority to deal with the IRS on the estate's behalf.

Pay the Debts. The claims of the estate's creditors must be paid. Sometimes a claim must be litigated to determine if it is valid. Any estate administration expenses, such as attorneys', accountants' and appraisers' fees, must also be paid.

Manage the Estate. The administrator takes legal title to the assets in the probate estate. The probate court will sometimes require a public accounting of the estate assets. The assets of the estate must be found and may have to be collected. As part of the asset management function, the administrator may have to liquidate or run a business or manage a securities portfolio. To sell marketable securities or real estate, the administrator will have to obtain stock power, tax waivers, file affidavits, and so on.

Take Care of Tax Matters. The administrator is legally responsible for filing necessary income and estate-tax returns (federal and state) and for paying all death taxes (i.e., estate and inheritance). The administrator can, in some cases be held personally liable for unpaid taxes of the estate. Tax returns that will need to be filed can include the estate's income tax return (both federal and state), the federal estate-tax return, the state death tax return (estate and/or inheritance), and the deceased's final income tax return (federal and state). Taxes usually must be paid before other debts. In many instances, federal estate-tax returns are not needed as the size of the estate will be under the amount for which a federal estate-tax return is required.

Often it is necessary to hire an appraiser to value certain assets of the estate, such as a business, pension, or real estate, since estate taxes are based on the "fair market" value of the assets. After the filing of the returns and payment of taxes, the Internal Revenue Service will generally send some type of estate closing letter accepting the return. Occasionally, the return will be audited.

Distribute the Assets. After all debts and expenses have been paid, the administrator will distribute the assets. Frequently, beneficiaries can receive partial distributions of their inheritance without having to wait for the closing of the estate.

Under increasingly complex laws and rulings, particularly with respect to taxes, in larger estates an administrator can be in charge for two or three years before the estate administration is completed. If the job is to be done without unnecessary cost and without causing undue hardship and delay for the beneficiaries of the estate, the administrator should have an understanding of the many problems involved and an organization created for settling estates. In short, an administrator should have experience

At some point in time, you may be asked to serve as the administrator of the estate of a relative or friend, or you may ask someone to serve as your administrator. An administrator's job comes with many legal obligations. Under certain circumstances, an administrator can even be held personally liable for unpaid estate taxes. Let's review the major duties involved, which we've set out below.

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Probate. The administrator must "probate" the Will. Probate is a process by which a Will is admitted. This means that the Will is given legal effect by the court. The court's decision that the Will was validly executed under state law gives the administrator the power to perform his or her duties under the provisions of the Will.

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