



A Guide to Seven Key Issues
in the New Jersey Estate Administration Process

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What happens if you are appointed the executor of your loved one's estate? Do you know where to start or what to do? Most people are surprised to learn all of the steps it takes to administer someone's estate. This guide will provide a very general overview of the estate administration process assuming that someone died with a will.

Note: If someone died without a will then the estate administration process is a little different and this guide doesn't apply to parts of the process. Please refer to our website at www.PriceLawPractice.com to find more information about what to do if someone died without a will.

Disclaimer

Every effort has been made to ensure that the contents of this guide are accurate. The booklet cannot substitute for legal, financial and other forms of professional advice. Laws are in a constant state of change and what applies to a situation one day may not apply the next.

Nothing in this booklet is intended to provide legal advice. This is not a do-it-yourself tool. Rather, this guide contains information to help you identify various issues related to estate administration and have an idea of what the process entails.

There are many issues that can come up along the way that can lead to unexpected results and liability on the part of the executor. Be careful, be smart and if you have any questions or concerns then be sure to contact an attorney with experience helping people navigate the estate administration process.

Lastly, any examples set forth herein are included to illustrate a point and may not be appropriate to your situation. Estate administration issues are very fact specific and what applies on one situation may not apply in another.

1. Executor Liability. There are a number of considerations when you are appointed and ultimately accept the job as the executor of the decedent's estate. Once you are appointed to the position you become liable for doing the job timely and correctly. Take this responsibility very seriously.
 - ❑ Do you really want to be the executor? Most people are surprised to learn how much work goes into being the executor of someone's estate. Make sure you are willing to put the time in and do the work needed to properly administer the estate before accepting the appointment to the position.
 - ❑ Treat it like a job. By accepting the appointment as executor of someone's estate you are promising to act in keeping with the law and the obligations imposed on the fiduciary of an estate. It's sometimes more work than people expect so don't be caught off guard.
 - ❑ Duties of the executor. Some of the duties imposed on the executor include diligence, preventing waste, representing all beneficiaries and follow the terms of the will.
 - ❑ Order of tasks and the flow of estate income and assets. You must make sure you are managing the estate in the proper order - collect the assets, pay the expenses (including taxes), pay the debts and then (and only then) pay the beneficiaries. Doing this wrong or out of order can lead to potential liability.
 - ❑ Pressure from beneficiaries. There may be times when the estate beneficiaries pressure you to make distributions (give them money). You need to ignore their pressure and administer the estate in a way that protects everyone connected to the estate including vendors, creditors and beneficiaries.
 - ❑ Defending claims made against the estate. Beneficiaries, vendors, creditors and other individuals or entities can make claims against the estate regarding the construction of the will, the title of assets or even things you have done in your capacity as executor. Be aware of these claims and take action immediately if one is filed against the estate.
 - ❑ Help is available. An attorney with experience helping clients administer estates can assist with the jobs that need to be done and protect the executor from liability. In most situations the attorney is paid from the estate so it is not something the executor should have to pay for out of their own pocket. Be sure to discuss the issue of fees and who would pay them with the attorney.

2. Last Will and Testament. This is the document where the decedent appoints someone to serve as the executor and names the beneficiaries of the estate. Think of the will as instructions stating how to manage the property left behind by the decedent and appointing the person to be in charge of that job. A few important things to think about regarding the will include:
- ❑ Executor. Identify the person named as the executor in the will and notify that person of their appointment.
 - ❑ Original will. You need the original will to begin the estate administration process in a simplified manner. If you don't have the original will you may not be able to admit a copy of the document to probate although in some situations it may be possible. The presumption, however, is that if the original will is missing then it was the decedent's intent to revoke the will so admitting a copy of the document to probate can be very difficult, time consuming and expensive.
 - ❑ Beneficiaries/Next of Kin. Identify the beneficiaries of the estate and the decedent's next of kin. You need this information in order to begin the estate administration process with the Surrogate. If beneficiaries have predeceased the decedent then you may have to find their children or other relatives depending on how the will was written.

3. County Surrogate. This is the person/office that does the following:
 - a. Determines the validity of a will (in most situations although in certain circumstances the probate judge will do that);
 - b. Officially empowers the person named as the executor to act in that capacity;
 - c. Gives the executor the authority to act on behalf of the estate;
 - d. Makes sure that the executor is doing the job the way it is supposed to be done.

The Surrogate's office will be most involved in the beginning of the process - you can't start working on the estate until the Surrogate has officially appointed you to the role of executor. Here are some things you need to know about working with the Surrogate's office:

- County where decedent resided. The estate is overseen by the Surrogate in the county where the decedent resided.
- Location and phone number of the Surrogate's office - You want to contact the Surrogate's office to discuss the probate procedure before you begin the probate process. The addresses, phone numbers and websites for all Surrogate offices in the State of New Jersey can be found at www.PriceLawPractice.com. Some information you want to confirm before starting the probate process includes:
 - What is the process to admit the decedent's will to probate?
 - Do you need an appointment?
 - Are there forms you need to complete before you arrive?
 - What documents are needed? In many situations, at the very least, you need::
 - Original will
 - Death certificate
 - Identification for executor
 - Check or another form of accepted payment
- Documents prepared by the Surrogate's office. The Surrogate's office will prepare official court documents. You need these documents to administer the estate. They could be ready while you wait, later the same day or they may be mailed to you or made available at a later time for pickup. The documents include:
 - Letters Testamentary. This is the formal document that appoints the executor to that position.
 - Short Certificate. These are evidence that the executor is authorized to act on behalf of the estate.

4. Notice to Heirs and Beneficiaries. This is a very important part of the estate administration process that is often overlooked. Providing notice to the heirs, beneficiaries and any other people entitled to notice starts the clock on any claims that might be made against the estate (there are time limits if people want to challenge the will or other aspects of the estate and that time limit often begins when notice is provided).

- ❑ New Jersey Court Rule 4:80-6 - Notice of Probate of Will. This court rule says the following:

Within 60 days after the date of the probate of a will, the personal representative shall cause to be mailed to all beneficiaries under the will and to all persons designated by R. 4:80-1(a)(3) (the spouse, heirs, next of kin and other persons, if any, entitled to letters, and their relationships to decedent), at their last known addresses, a notice in writing that the will has been probated, the place and date of probate, the name and address of the personal representative and a statement that a copy of the will shall be furnished upon request. Proof of mailing shall be filed with the Surrogate within 10 days thereof. If the names or addresses of any of those persons are not known, or cannot by reasonable inquiry be determined, then a notice of probate of the will shall be published in a newspaper of general circulation in the county naming or identifying those persons as having a possible interest in the probate estate. If by the terms of the will property is devoted to a present or future charitable use or purpose, like notice and a copy of the will shall be mailed to the Attorney General.

- ❑ Surrogate guide. Most Surrogate offices have a form or a guide for preparing the notices that must be sent and instruction on how to provide the proof of mailing that must be sent to the Surrogate. A form for this notice and the proof of mailing is available on the Price & Price, LLC, website (see www.PriceLawPractice.com)
- ❑ Time limit for notice requirement - Must be done within 60 days after the date of the probate of the will.
- ❑ Proof of mailing filed with Surrogate. According to court rule, “proof of mailing shall be filed with the Surrogate within 10 days thereof.”
- ❑ Publication of notice. According to the court rule, “If the names or addresses of any of those persons are not known, or cannot by reasonable inquiry be determined, then a notice of probate of the will shall be published in a newspaper of general circulation in the county naming or identifying those persons as having a possible interest in the probate estate.”
- ❑ Notice for charitable beneficiaries. If a beneficiary or beneficiaries of the estate are charitable beneficiaries then, in addition to providing notice to the beneficiaries a copy of the notice must be mailed to the New Jersey Attorney General’s office.

5. Assets/Debts/Income/Expenses. In general the executor is charged with collecting the assets, paying the estate expenses and estate debts and distributing the remaining funds to the beneficiaries. This is the most difficult and time consuming part of administering an estate.
- ❑ Find and collect estate assets - these include cash, bank accounts, investment accounts, individual stocks and bonds, coins, cars, boats, jewelry, artwork and any other possible asset owned by the decedent at the time of passing. There are a number of issues that could arise. Here are some things to be aware of:
 - ❑ Date of death value. You need to determine the date of death value for all assets in the estate.
 - ❑ Convert to cash or keep in kind. Do assets need to be sold and converted to cash or kept in kind for ultimately distribution to beneficiaries.
 - ❑ Maximize value and avoid waste. The executor must do everything possible to prudently maximize value of the assets and avoid waste or decline in value.
 - ❑ Estate account. This is used to hold assets titled to the estate. Once someone passes away assets should be retitled to the name of the decedent (or directly to beneficiary if they are non-probate assets). Issues related to opening an estate account include:
 - ❑ Estate Id Number (EIN). This is the tax id number for the estate (think of it like the estate's social security number). You get this through the IRS and more information can be found on their website at: <https://www.irs.gov/businesses/small-businesses-self-employed/apply-for-an-employer-identification-number-ein-online>.
 - ❑ Documentation. Check with the institution to determine what is needed. At a minimum, in order to open an estate account, you will need a death certificate, short certificate and estate id number.
 - ❑ Determine and pay estate expenses and taxes. These include but are not limited to things like the funeral, probate fees, mailing fees, tax payments, professional fees including the attorney, accountant, realtor, appraiser and any other fees that might be incurred.
 - ❑ Determine and pay debts of estate. These include things like medical bills, mortgages, car loans, credit cards and pretty much any other money owed by the decedent at the time of their passing.
 - ❑ Be aware of the priority of payments. The estate administration statutes direct that certain debts and expenses must be paid before others and beneficiaries are only paid after all debts and expenses are paid. It is very important that the executor follows the order laid out by the statute. If the estate doesn't have enough money to pay all of the debts and expenses then the estate may be insolvent. In that case the beneficiaries won't get anything and certain debts and expenses might not be paid. The executor could be personally liable to a vendor or creditor of the estate that should have been paid but wasn't.

6. Taxes. An estate may be subject to a number of taxes. It's important to be aware of these so you know they exist and can get help with filing any necessary tax returns. In many situations an attorney can help with estate and inheritance taxes while an accountant will often help with the income taxes. Some taxes are paid once and some are paid each year. Be really careful when it comes to taxes because interest and penalties can be significant if they are filed incorrectly or aren't filed at all. Here are the main taxes that you need to be aware of in your role as the executor of the estate:

- ❑ Gift Tax. This is a tax on gifts made during someone's lifetime that exceed the annual exclusion amount. In 2019 that amount is \$15,000. This tax is important when administering an estate because any gift tax that was applied to the estate tax exemption (rather than paid in the year it was incurred) will reduce the exemption by that amount.
- ❑ Estate Tax. Estate tax is a tax on the value of the decedent's estate at the time of death.
 - ❑ Federal estate tax. There is a federal estate tax and as of 2019 the estate tax exemption for an individual is \$11.4 million dollars (it is \$22.8 million dollars for a married couple). If you have an estate that exceeds that amount then you may be subject to federal estate tax. This return must be filed within nine (9) months following the decedent's date of death.
 - ❑ NJ estate tax. As of 2019 there is no New Jersey state estate tax. That could change in the future but for anyone who dies in 2019 their estate won't be subject to any NJ estate tax.
- ❑ Generation Skipping Tax. This tax is assessed if the decedent leaves assets to an individual who is two or more generations removed from him or her (like a grandchild or a great grandchild) or someone who is more than 37 ½ years younger than the decedent.
 - ❑ Federal generation skipping tax. The exemption for the generation skipping tax is the same as the \$11.4 million exemption for individuals (and \$22.8 million for married couples). So, that pretty much means, an estate worth less than that amount, no matter who it's left to, won't be subject to federal estate or generation skipping taxes. This tax must be paid within nine (9) months following the decedent's date of death.
 - ❑ NJ generation skipping tax. As of 2019 there is no New Jersey generation skipping tax. That could change in the future but for anyone who dies in 2019 their estate won't be subject to any NJ generation skipping tax.
- ❑ Inheritance Tax. This is a tax based on the relationship between the decedent and the beneficiaries of the estate. As a rule of thumb the more distant the relationship the greater the inheritance tax will be.

- ❑ Federal inheritance tax. As of 2019 there is no federal inheritance tax. That could change in the future but for anyone who dies in 2019 their estate won't be subject to any federal inheritance tax.
- ❑ NJ inheritance tax. New Jersey has an inheritance tax. They tax people based on their relationship to the decedent. Spouses, domestic partners, children, step-children and certain other individuals don't pay an inheritance tax while pretty much everyone else does with the tax rate depending on the relationship. This return must be filed within eight (8) months following the decedent's date of death.
- ❑ Income taxes. Much like an individual an estate is subject to both federal and state income taxes. Tax returns must be prepared for the estate each year. And, in many situations an income tax return must be filed for the decedent personally for the year he or she died. It is the executor's responsibility to make sure that happens.
- ❑ Tax waivers. This isn't a tax but rather documents issued by the New Jersey Department of Revenue to show that all estate and inheritance taxes have been paid by the estate. Banks and financial institutions each need a tax waiver to release the assets they are holding to the estate (prior to receiving a tax waiver they can only release half of the money they have on account). Additionally, a title company won't release all of the proceeds from the sale of real property without a tax waiver. Sometimes, if the estate isn't going to owe any taxes, you can sign a waiver without filing an estate or income tax return (known as an L-8 for real estate and an L-9 for banks and financial accounts) but in many situations you will need to file an appropriate state estate or inheritance tax return before you can get the required tax waivers.

7. Distribution to Beneficiaries & Closing the Estate

- ❑ Executor commissions. Executors are entitled to a commission for administering an estate. The amount depends on the number of executors and the value of the estate. Commissions, unlike distributions to estate beneficiaries, are subject to income tax (so if you are the executor and sole beneficiary of the estate then depending on the situation you might be better not taking a commission and receiving the entire value of the estate as the beneficiary).
- ❑ Who gets what? The will names the beneficiaries and their share of the estate. Sometimes based on how the will was written it is easier to determine who gets what than others. But regardless you must follow the instructions in the will. There are a couple of situations that require further consideration. Some of them are:
 - ❑ Beneficiary predeceased the decedent. If a beneficiary dies before the decedent then you refer to the will to determine what happens to that beneficiary's share of the estate.
 - ❑ Beneficiary dies after the decedent. In that case, provided that the beneficiary lives long enough after the decedent to qualify for the gift then the beneficiary's estate would receive the gift. If the beneficiary doesn't outlive the decedent by enough time to qualify for the gift then you refer to the will to determine what happens to that beneficiary's share of the estate.
 - ❑ Specific gifts vs. the residue. Some gifts are specific - an individual gets a certain piece of property or a certain account. These are usually given out first. What's left is the estate residue - this could be expressed as gifts of specific dollar amounts or percentages. These are usually given out after the specific gifts. The order that beneficiaries receive what's left to them is stated in the estate administration statutes. It is very important that you distribute gifts in keeping with the order provided in the statute.
 - ❑ In kind distributions or proceeds of a sale. The will should direct whether assets are to be given to the beneficiaries "in kind" (e.g. like re-titling a house to the beneficiary) or if the beneficiary is to receive the proceeds of the sale of the asset (e.g. the money from the sale of the house). The will often says if an asset is to be sold by the estate and the proceeds distributed to the beneficiary. Make sure you are clear on what needs to be done because if you don't follow the terms of the will the beneficiary could have a claim against the estate and the executor might be personally liable for any damages.
 - ❑ Minor and disabled beneficiaries. If any of the beneficiaries are minors or disabled individuals there may be provisions specific to them. It is important that you review the will carefully to see how you should handle their share of the estate. If the will is silent then there are statutory provisions for what to do with a minor's share of an estate. As for a disabled beneficiary, it is important that you discuss the gift with the

beneficiary or any of their fiduciaries to make sure the funds are handled in such a way as to not jeopardize any government benefits they may be receiving as a result of their disability.

- ❑ Estate accounting. The beneficiaries are entitled to an estate accounting. That requires the executor to disclose all of the estate assets, debts, income and expenses. Everything the executor does will be subject to review by the beneficiaries. Expect that the beneficiaries (and possibly their attorneys) will be looking at the accounting carefully to make sure they are getting everything they are entitled to.
- ❑ Refunding bonds. These are documents the beneficiaries sign before they receive their distribution from the estate where they promise the executor they will refund the estate any money needed to pay any valid claims against the estate if any arise in the future. It is very important that the executor get these forms signed by the beneficiaries because without them the executor may be personally liable if any claims against the estate come up at some point in the future after distributions to the beneficiaries have been made.
- ❑ Beneficiaries are paid last. Estate beneficiaries are paid last only after all estate debts and expenses have been paid. Beneficiaries may start asking for money as soon as the decedent passes away but you must wait to pay them until all of the estate work is complete and you know all debts and expenses have been paid in keeping with the statutes that govern estate administration in New Jersey.

Other Issues to Consider. Depending on the situation, there are a number of other issues that need to be considered during the estate administration process that weren't discussed in this guide (if guide was a comprehensive and covered everything you might encounter in the probate process it could be hundreds of pages). Some of these items include:

- ❑ Someone dies without a will. That situation is very similar to what happens if someone has a will but the intestacy statute directs who can be the administrator of the estate (a role like the executor) and who are the beneficiaries of the estate.
- ❑ If you can't find the original will. Unfortunately, in that situation you can't just go to the Surrogate's office to probate the copy of the will. You need to make a formal application to the court (consisting of a complaint and order to show cause) to request that the court admit the copy to probate.
- ❑ Probate assets vs. non-probate assets. Non-probate assets are assets that pass directly to a beneficiary or joint account owner - they are not part of the estate controlled by the executor. Probate assets are assets that don't have any named beneficiaries or joint account owners and, as a result, are controlled by the decedent's will. Probate assets are the assets collected by the executor, deposited in the estate account and ultimately used to pay expenses, debts and, if any are left after those items are paid, the beneficiaries.

Visit the Price & Price, LLC, website at www.PriceLawPractice.com for more information about the estate administration process. If you need help with any estate in New Jersey the attorneys at Price & Price, LLC, can assist you with the process. Call our office at 856-429-5522 and we will be happy to help you.