

Office of
The Morris County Surrogate

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



Surrogate Heather J. Darling, Esq.

Release 1.0 - January 2020

Website
www.morrissurrogate.com

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This is intended as a handbook to help you understand the services available to you from the Office of the Surrogate, how to make use of them, and what benefits you may gain from this public facility. While the authors and editors have made every effort to make this handbook correct and current, it is comprised of general guidelines to assist you in understanding and using the services of this office. It is not a legal document and does not address particular circumstances or specific cases. This handbook is not a substitute for information the office would furnish related to specific circumstances and individuals, nor is it a substitute for professional personal legal and financial advice that your circumstances may require. Before you take specific action or make specific decisions that relate to the responsibilities and services of the Office of the Surrogate of Morris County, you are advised to use the resources of this office and your own sources of legal and financial advice. Neither this Office nor any author or editor of this handbook shall have any liability to any person or entity with respect to any liability, loss or damage caused or alleged to be caused directly or indirectly by the information contained in this document nor the activities and practices described herein.

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The Morris County Surrogate

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to
Wills, Trusts, and Estates**



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THE OFFICE OF THE MORRIS COUNTY SURROGATE'S COURT

The function of the Morris County Surrogate's Court includes administering Wills, Trusts and Estates for Morris County Residents. The Surrogate is elected for a five year term under the New Jersey State Constitutions and is a Chancery Division Clerk of the New Jersey Superior Court.

The Surrogate serves as Judge of the Surrogate's Court for uncontested Wills, Trusts and Estates presiding over the filing of Wills that appoint executors, in order to transfer a decedent's real and personal property. The County Surrogate appoints an administrator to an estate where there is no Will.

The Surrogate serves as Deputy Clerk of the Superior Court, maintaining the files of contested probate matters and adoptions. The Surrogate's Court also oversees the Administration of Guardianships of incapacitated adults.

The Morris County Surrogate's office is open from 8:30 A.M. to 4:30 P.M. Monday through Friday and from 4:30 P.M. to 6:30 P.M. on Tuesday, all **by appointment only**. All inquiries will be gladly addressed by the Surrogate and her staff at 973-285-6500.

You may wish to keep this Guide with your Will and other important documents to assist your Executor in handling your estate.

WILLS AND ESTATES

Wills

A Will is a legal document that designates the distribution of an individual's estate upon death. An individual must be at least 18 years of age in order to execute a Will. A Will specifies how property is to be divided, to whom it shall be distributed and who is in charge. If an individual does not have a Will, an Administrator, which is appointed by the Surrogate's Court, distributes the estate according to the laws of the State of New Jersey. It is therefore very important for individuals over the age of 18 to have a Will, in order to protect their specific interests and intentions concerning the distribution of their property.

Types of Wills include the following:

Standard Will

A standard Will is one that is written, signed by the Testator, and witnessed by two individuals. A standard Will also contains an attestation clause that declares it as being that last Will of the Testator.

Self-proving Will

A self-proving Will is a standard Will whose two witnesses sign at the time the Will is notarized. This Will includes an *Acknowledgement and Affidavit Relating to Execution of the Will* that is attached to the original Will. Having a self-proving Will eliminates the need for witnesses to appear before the Surrogate in order to have the Will admitted to probate, and the need to appear before the Superior Court if the witnesses cannot be located or have died.

Holographic Will

A Holographic Will is one in the handwriting of the Decedent and bears no witnesses. A Holographic Will can be admitted to probate only in Superior Court, and in the manner prescribed by the Rules Governing the Courts of New Jersey. This type of Will is more vulnerable to challenge.

Whatever type of Will is executed, it should be kept in a safe place that is accessible in case of an emergency or upon the Testator's death. Executors, family members, or those close to the Testator should be aware that the Will exists and where it is kept.

Items to Remember When Having a Will Drafted

A Will is a legal document that is not effective unless properly prepared. Individuals should not undertake to execute a Will unless they are knowledgeable about the requirements of a legally enforceable Will, or have had an opportunity to obtain legal advice. The process of executing a Will can be simple, but certain items should be kept in mind while going through this process.

1. All beneficiaries should be specifically named and specific amounts, or percentages, of bequests should be listed in the Will.
2. Alternate beneficiaries should be specifically named in the event a designated beneficiary dies before the Testator. If money or assets remain in the Testator's estate, an individual should be named to receive the remainder in specific dollar amounts or percentages.

3. All Wills must designate an executor. That individual is responsible for carrying out the intent of the testator with respect to property distribution.
4. An alternate Executor, preferably substantially younger than the Testator, as well as capable and trustworthy, should be designated in the event the first named executor dies before the Testator or is incapable of serving.
5. Provide that an Executor and Guardian(s) will serve without bond. This will prevent the need to set aside money from the estate for that purpose.
6. If the Testator has children under the age of 18, name a Guardian for those children. The designation of a Guardian should be discussed in advance of executing the Will. One or two individuals may be so designated. These individuals are responsible for the day to day care of the Testator's children as well as for any property the children may own or inherit.
7. All Wills and codicils (see next page) must be signed in the presence of two witnesses who are at least 18 years of age. The State of New Jersey requires that the Will be signed and witnessed before a notary public. It becomes a self-proving Will, provided it is properly worded and signed by the Testator, two witness and a notary public. (see page 6)

Changing Wills and Codicils

A codicil is an addition or supplement to the original Will that adds to or replaces part of the original Will. A codicil is offered to probate in addition to the original Will and must make reference to the original Will. A codicil is often used when a testator undergoes some change in his or her life such as a marriage, divorce, birth or death of a child, a witness or Executor, purchase or sale of real property, or a change in financial status. Changes in the federal estate or state inheritance tax laws may also warrant a codicil. An executed Will should be reviewed upon the occurrence of any of the above events to evaluate the need for a codicil or a new Will. In order to prevent confusion, it may be beneficial to create a new Will.

Intestate succession as of February 27, 2005

If an individual dies without a Will, the laws of the State of New Jersey provide for the distribution of property to the heirs by intestate succession.

1. If an individual dies leaving a spouse and children, who are also the children of the surviving spouse, the spouse receives the entire estate.
2. If an individual dies leaving a spouse and children who are not also the children of that spouse, the spouse receives the first 25% (not less than the first \$50,000 nor more than \$200,000) plus $\frac{1}{2}$ of the balance. The rest goes to the children.

3. If an individual dies leaving children but no spouse, the children receive the entire estate divided equally among them. If there are grandchildren, they take their deceased parent's share by representation. If all the children are deceased, then the grandchildren share equally in the estate.
4. If an individual dies leaving a spouse, mother and father, but no children, the spouse receives the first 25% (not less than the first \$50,000 nor more than \$200,000) plus $\frac{3}{4}$ of the balance. The rest goes to the parents.
5. If an individual dies leaving no spouse and no children and that individual's parents survive, the parents inherit the entire estate. If no parent survives, brothers and sisters receive equal amounts of the entire estate.
6. If the estate does not exceed \$50,000 and there is a surviving spouse, an Affidavit of Surviving Spouse may be issued by the Surrogate. An affidavit allows a husband or wife to dispose of the property. If there is no surviving spouse and the property does not exceed \$20,000, a close relative can be issued an affidavit to handle the disposition.

-
7. If the estate exceeds \$50,000/\$20,000, an Administrator will be appointed by the Surrogate. Before an administrator can be appointed, all other next of kin of the decedent must renounce their right to be the administrator. A surety bond is also required. The Surrogate will issue a "Letter of Administration" giving the administrator the necessary authority to transfer property, withdraw money from the bank accounts, pay outstanding bills and handle the other affairs of the estate.

Challenges to Executor or Administrator

To challenge the appointment of an Executor or Administrator, a caveat must be filed prior to their appointment, with the Surrogate to temporarily prevent the probation of a Will or granting of administration. After an Executor or Administrator is appointed, if you allege impropriety, delay or negligence on their part, you must make an application to the Court to seek their removal.

The appointment of an Administrator often takes time, especially if there are challenges to the appointment which must be addressed before a court, or if a search for distant relatives must be performed. During that period, final pay checks can be withheld and bank accounts that were not jointly held can be frozen.

Finally, if there are no next of kin, the property will escheat to the State of New Jersey.

Probating a Will

Probating a Will refers to the legal process through which the authenticity of a Will is established. Once probated, a Will becomes a permanent part of the county records.

Upon the death of a loved one, there are certain steps to be taken to ensure the smooth probation of a Will.

1. Locate the decedent's original Will.
2. Present an original death certificate with raised seal. Also provide the names and addresses of persons named in the Will and all next of kin to the Surrogate's office. If the Will is self-proving, it can be probated within a very short time. If the Will is not self-proving, one of the witnesses to the Will must come to the Surrogate's office or present proof of their signature.
3. Within 60 days of the Will's probation, the Executor shall notify all the heirs and beneficiaries named in the Will, with proof sent to the Surrogate's Court.
4. The Social Security Office, Veteran's Administration and employer of the decedent should also be contacted to ascertain any benefits due the decedent.

TAXES

State Inheritance Tax

The revised New Jersey Transfer Inheritance Tax Act of 1985 provides for four classifications of beneficiaries.

1. Class A– Spouses, children, step-children, grandchildren, parents, and grandparents are not subject to state inheritance tax.
2. Class B- This class was eliminated in a 1963 revision of the inheritance tax law.
3. Class C- Brothers, sisters, daughters-in-law and sons-in-law are exempt from inheritance tax for the first \$25,000. They are subject to 11% tax for bequests in excess of \$25,000 and up to \$1,100,000; 13% tax for bequests in excess of \$1,100,00 and up to \$1,400,000; 14% tax for bequests in excess of \$1,400,000 and up to \$1,700,000; and 16% tax for bequests in excess of \$1,700,000.
4. Class D- All other individuals that do not fall into Class A or C are exempt from tax if the total amount of the bequest does not exceed \$499. These individuals are subject to 15% tax on all bequests over \$499 and up to \$700,000, and 16% tax on bequests in excess of \$700,000.
5. Class E- Charitable or non-profit entities are exempt from inheritance tax.

Further information concerning state inheritance tax may be obtained by contacting the New Jersey Transfer Inheritance and Estate Tax Division.

NJ Estate Tax

Current law states there is no NJ Estate Tax on or after 2018. Please consult an attorney or a tax professional for current regulations.

Federal Estate Tax:

For transfers from spouse to spouse there is no federal estate tax. For all others the estate tax exemption is approximately \$11.58 million for 2020 and adjusted for inflation. Please consult an attorney or a tax professional for current regulations.

TRUSTS

A Trust is an agreement which allows a third party to administer another's property or bequest. A Trust can be created through or independent of a Will. Such an agreement can be established for minor children or others who are incapable of managing their affairs or bequests. The party appointed to administer this property or bequest is called a Trustee.

When a Trustee is named in a Will, that individual must file a written declaration under oath of his or her acceptance of the trusteeship and a Power of Attorney. This declaration contains the name and

address of the Trustee and all persons who have an interest in the Trust. It also identifies the interest of the Trust. Upon filing of an Acceptance and Power of Attorney, appropriate certificates and Letters of Trusteeship are issued by the Surrogate's Court.

POWER OF ATTORNEY

A Power of Attorney is a written document in which an individual authorizes another to act on his or her behalf concerning real property, bank accounts or other legal matters. A Power of Attorney is often used when an individual is unable to carry out his or her own affairs, due to incapacity or absence from the vicinity for an extended term. It can be of a limited power, giving the individual authority to act for a specific purpose or event, such as the purchase of a home. It can also be of a general power, giving an individual power to act on all legal matters. "Durable" Power can be effective immediately upon signing and "Springing" Power is effective upon certain occurrences. A Power of Attorney ends with death of the grantor.

CREDITORS

Under N.J.S.A.3:22-4 creditors of the decedent need to present their claims to the Executor in a sworn writing within nine months from the date of the decedent's death. The Executor cannot distribute assets to beneficiaries until all claims are satisfied, or the Executor may be personally liable to the creditor for the debt.

If a claim is not presented to the Executor within the nine months from the date of the death, the Executor is not liable to the creditor with respect to any assets which the Executor distributed or paid on other claims before the presentation of the claim.

All Executors are required to obtain a Release and Re-funding Bond from the Beneficiaries listed in the Will.

Claims presented to the Executor need not be accepted and the Executor can dispute claims. In the case of a dispute, the claimant must commence an action on the claim within one month after receiving the notice of dispute. If the creditor does not commence an action within that time, the Executor may not be liable to the creditor with respect to assets delivered or paid before the commencement of any action. Creditors may also be willing to negotiate with the Executor for payment of a lesser amount.

Creditor Complaints

If there are no next of kin, any creditor who is owed a debt from the estate has the right to apply for administration as a creditor of the estate after 40 days from the date of death of the Decedent. This is of particular importance if there is a person who paid for the decedent's funeral and is seeking reimbursement or a landlord is owed rent on the decedent's residence.

Priority of Claims

Under New Jersey Law, there is a specific order in which debts should be paid. The Executor should first pay the bill for reasonable funeral expenses. Any costs or fees associated with administering the estate should be paid next, followed by debts and taxes. Medical expenses from the decedent's last illness are paid next, then, judgments or liens. Any other outstanding debts are paid last.

Non Probate Accounts

Certain accounts are not subject to probate and are not accessible by creditors. For example, insurance policies with named beneficiaries, payable-on-death accounts and 401(k) are all non-probate accounts and cannot be used to pay creditors. These accounts pass immediately to a beneficiary upon death.

ADOPTION

Adoption is the legal process through which a parent-child relationship is established between the adopting parent and adopted child. The Surrogate reviews and files the Complaint for Adoption, Order Fixing Date for Hearing and Final Judgment for Adoption. Depending on the type of adoption, there are other documents that must be filed. The complaint cannot be filed until a child has been in the adoptive home a prescribed length of time, depending on the type of adoption.

Types of Adoption

Adult Adoption— The adult seeking to be adopted must be at least 10 years younger than the adopting parent. No waiting period.*

Relative Adoption— The child was not received from an agency. The adoptive parents are a brother, sister, grandparent, aunt or uncle. Hearing scheduled in 2-3 months.*

Agency Adoption— The child is in the custody and control of an approved agency. Hearing shall be scheduled within 10-30 days.*

Step-Parent Adoption— The child is the natural child of the plaintiff's spouse. Hearing scheduled in 2-3 months.*

Foreign Adoption— The child is in the custody and control of an approved agency.

Foreign Re-Adoption— The foreign child was adopted in a foreign country before a judge or notary and is being re-adopted in New Jersey in order to create a valid paper trail for the child to New Jersey.

Private Adoption— The child has been received from a birth mother. A preliminary hearing scheduled in 60 to 90 days and a final hearing between 6 and 9 months.*

*All waiting periods are as of the time of this publication. Check with your attorney or agency for exact waiting periods at the time you are seeking to adopt.

County of Venue— Adoption papers shall be filed with the Surrogate in one of the following:

1. The County in which the adopting parents reside;
2. The County where the child resided immediately before the adoption placement;
3. The County in which the child was born if the child is less than 3 months of age.

4. If the child is being adopted through an approved agency, the action may be brought in the Superior Court, Chancery Division, Family Part of any County in which the approved agency maintains an office.

GUARDIANSHIPS

Guardian

A Guardian is one who has been appointed by the court to conduct the general care and control of another. When a Guardian is needed for a minor (under the age of 18), the Guardian is appointed by the Surrogate's Court. When a Guardian is needed for someone 18 years of age or older, the Guardian is appointed by the Superior Court.

Adult Guardianships

When a person, by reason of medical necessity, is unable to govern themselves and manage their affairs, after the proper paperwork is filed, the Court will appoint a Legal Guardian. Court appointed Legal Guardians make decisions for incapacitated people about personal and medical care, meals, transportation, and even where a person lives. Guardians control assets, manage budgets, pay debts and make all financial and investment decisions for the people they assist. Guardianships have certain procedural requirements, including but not limited to, proof from two medical or psychological exams within 30 days of filing a complaint in the Surrogate's Court. A court hearing is required and an attorney will be appointed for the alleged incapacitated person.

In order to minimize the opportunity for abuse of power by guardians, the judiciary has a Guardianship Monitoring Program. Guardians are required to file annual reports on the well being of those in their care. This includes parents, children, brothers, sisters and friends who are caregivers to those who are most vulnerable. If there is no next of kin or friend to become the guardian, the court may require that the Office of the Public Guardian become involved.

Guardianship of a Minor

When a minor is expected to receive assets over \$5,000.00, a guardian for the minor must be appointed. Guardians for minors are appointed by the Surrogate's Court. In the event of the death of a parent, the other parent is typically the guardian of the child. However, in the case of the permanent absence of both parents from the child's life, the Surrogate or the Superior Court may appoint a guardian for the person, estate or both.

FEES

The duties of the Morris County Surrogate and her office are established by the acts of the New Jersey State Legislature, as are the fees to be charged for those services.

Payment can be made by either cash or check made payable to the Morris County Surrogate's Court. The office does not accept credit cards.

GLOSSARY

Administrator/Administratrix—Person appointed by the courts to take charge of the estate of a decedent who dies without a Will.

Beneficiary—Person designated to receive money, property or benefits under a Will.

Bequest—A gift of personal property by a Will.

Bequeath—To dispose of personal property through a Will.

Codicil—An addition or supplement to an original Will that adds to or deletes only part of a Will.

Decedent—A deceased person.

Devise—A gift of real estate through a Will.

Escheat—Property reverting to the state for want of any legal heir.

Estate—Property and possessions owned by an individual.

Executor/Executrix—Person named in a Will to carry out the wishes and intentions of the Will.

Guardian—Person entrusted by the law with the personal and/or fiduciary care of another.

Heir—Person who inherits property from a deceased person.

Intestate—When a person dies without a Will.

Legatee—Person who receives a gift under a Will.

Personal property—Intangible property, such as stock, bonds or bank accounts, and tangible property such as jewelry, furniture or an automobile.

Probate—Official proof of the authenticity or validity of a Will.

Real Property—Land or building.

Surrogate—Elected county official who oversees probate in the State of New Jersey.

Testator/testatrix—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 distributed after death.

Witness—Person who observes the signing of a document and attests to the signatures.

Helpful Links for Fiduciaries:

Agents Under Powers of Attorney

[http://
files.consumerfinance.gov/f/201310_cfpb_lay_fiduciary_
guides_agents.pdf](http://files.consumerfinance.gov/f/201310_cfpb_lay_fiduciary_guides_agents.pdf)

Court Appointed Guardians

[http://
files.consumerfinance.gov/f/201310_cfpb_lay_fiduciary_
guides_guardians.pdf](http://files.consumerfinance.gov/f/201310_cfpb_lay_fiduciary_guides_guardians.pdf)

Self-Help guardianship

[NJ Courts.gov](http://NJCourts.gov)

Trustees

[http://
files.consumerfinance.gov/
f/201310_cfpb_lay_fiduciary_guides_trustees.pdf](http://files.consumerfinance.gov/f/201310_cfpb_lay_fiduciary_guides_trustees.pdf)

Government BenefitsFiduciaries (Social Security Representative Payees and VA fiduciaries)

[http://
Files.consumerfinance.gov/
f/201310_cfpb_lay_fiduciary_
guides_representative.pdf](http://Files.consumerfinance.gov/f/201310_cfpb_lay_fiduciary_guides_representative.pdf)

CHECKLIST

This is a list of documents and important papers that may help settle your estate and resolve issues for your survivors should you die. Keeping them in a single known location or seeing that someone responsible has a list of the location of all these documents can save time and trouble later.

Will and other final instructions documents	Real Estate deeds, related records
Death certificate	Income tax records
Checking/savings/CD acct. numbers and banks	Vehicle titles and other paperwork
Safe deposit key, number, name of holder	Installment loans
Stocks, bonds, mutual funds, other securities	Birth/baptismal cert., adoption papers, etc.
Pension and annuity records	Social security numbers
Insurance policies	Marriage, divorce, prenuptial documents
Union/company health and other benefits	Military and civil service documentation

Other important information to have available is the name, addresses and phone numbers of the Attorney, Accountant or Financial Advisor and Physician.

TELEPHONE NUMBERS

Morris County Bar Association and Lawyer Reduced Fee Referral Program	973-267-6089
Lawyer referrals	973-267-5882
Morris County Surrogate's Office FAX	973-285-6500 973-829-8599
NJ Inheritance Tax Office	609-292-5033
NJ Motor Vehicle Information	609-292-6500
Legal Aid Society of Morris County	973-285-6911
Social Security Administration	800-772-1213
US Tax Information	800-829-1040
Department of Veterans Affairs	800-827-1000

NAME ADDRESS PHONE

Accountant _____

Attorney _____

Financial Advisor _____

Physician _____

YOUR COMMENTS

Please let us know how future issues of *A Citizen's Guide to Wills, and Estates* can be improved or corrected to serve you and others in Morris County better: (Continue on reverse and attach additional paper if

Your name, address, and telephone number (optional):

name

telephone

street address, apt.

city/town, state, ZIP code

CLIP AND MAIL TO:

"Citizen's Comments"

Surrogate Heather J. Darling

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To arrange for the Surrogate to speak to your club or organization, contact:

Hdarling@co.morris.nj.us



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