

WHAT TO DO

When a Loved One Has Passed

Legal Guidelines on the
Process of Managing an Estate

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This is NOT legal advice. It was written by a lawyer licensed to practice in New Jersey for the sole purpose of outlining the estate administration process. Individual situations often differ and may require the services of an attorney.



WHAT TO DO: WHEN A LOVED ONE HAS PASSED

This memorandum provides useful information regarding the management of a loved one's affairs (estate) when they have passed. Estate matters can be laborious and emotionally charged. This memorandum will explain probate and administration in New Jersey and provides information for you to begin navigating the process of managing your loved one's estate. However, this memorandum provides general information, and is not intended to serve as legal advice. No two estates are the same and the law on the administration of estates is extensive. It is recommended that you consult with an experienced estate attorney to answer any questions related to your particular circumstances.

There are three main steps to handle someone's estate when they have passed:

1. Formally open the Estate through Probate or Administration with the appropriate Surrogate: Probate is the process to validate a Will and appoint an Executor(ix) to handle the Estate. Administration is the process to qualify an appropriate Administrator to handle the Estate when there is no Will.
2. Manage the Estate: The appointed representative/fiduciary in either case is tasked with managing the assets, debts, taxes, and distributions related to the Estate; and
3. Close the Estate.

This memo will address the key (and at times complicated) elements of each of the above by offering steps to avoid pitfalls, financial harm, and headache.



INTRODUCTION

When a loved one passes away, it can be difficult to know where to start – memories remain, and so does the management of their estate. A person’s estate is property they owned when they died, including their belongings, physical and intangible assets, land and real estate, investments, collectables, etc. The weight of responsibility to manage the estate of a loved one can be daunting, and we are often surprised to find the extensive duties that such a role entails. Whether we volunteered to manage our loved one’s estate, or in many cases, were unknowingly appointed to do such in our loved one’s Will, how we manage an estate can affect the mental and financial health of our families.

Managing an estate begins with the process of “probate” if your loved one had a Last Will and Testament (“Will”), or “administration” if they did not. Once you are appointed through probate or administration, there are a number of steps you should take to properly manage your loved one’s estate. This memorandum will (1) familiarize you with the history of probate and administration; (2) walk you through the probate and administration processes in New Jersey; and (3) outline considerations for managing the estate after the appointment of the executor or administrator.

HISTORY OF PROBATE AND ADMINISTRATION

The way we manage someone’s estate when they die originates from 12th and 13th century English law¹. A person may have prepared a “Will” appointing a representative and providing instructions for their estate assets to be handled via probate. Probate is the judicial process by which the validity of a Will is determined. The term “Probate” comes from the Latin word “Probare” meaning “to prove.”² In the absence of a Will, disposal of assets would be determined by “intestacy” law and the responsibility of managing property was given by the Courts to a near relative of the decedent, the “administrator.”³ Several different Courts were tasked with providing oversight of estate administration depending on the nature of a decedent’s assets and whether conflicts arose.⁴

During the 17th century, the common law of England, as modified by the Statute of Wills, was brought to what ultimately became the United States. During the earliest periods of colonial history, authority over estate matters was given to general courts or entrusted to governors and their councils.⁵ Over time, probate jurisdiction was extended to include county and other trial courts.⁶ The first Probate Court in the United States was established in Massachusetts in 1784.⁷ Similar courts were established in other states and called the Surrogate, Orphan Courts, or Court of the Ordinary.⁸

The New Jersey Surrogate Court was created by the New Jersey State Constitution in 1844.⁹ The Surrogate’s Court primarily determines the validity of Wills, qualifies the executor, and appoints an administrator where no Will exists. Each of New Jersey’s twenty-one counties has an elected Surrogate. ***This memo uses the term “Surrogate” throughout. The appropriate Surrogate in your case will be the Surrogate in the county where the decedent resided at the time of their death. See Appendix A for a list of the Surrogates Office’s in New Jersey with links and contact**



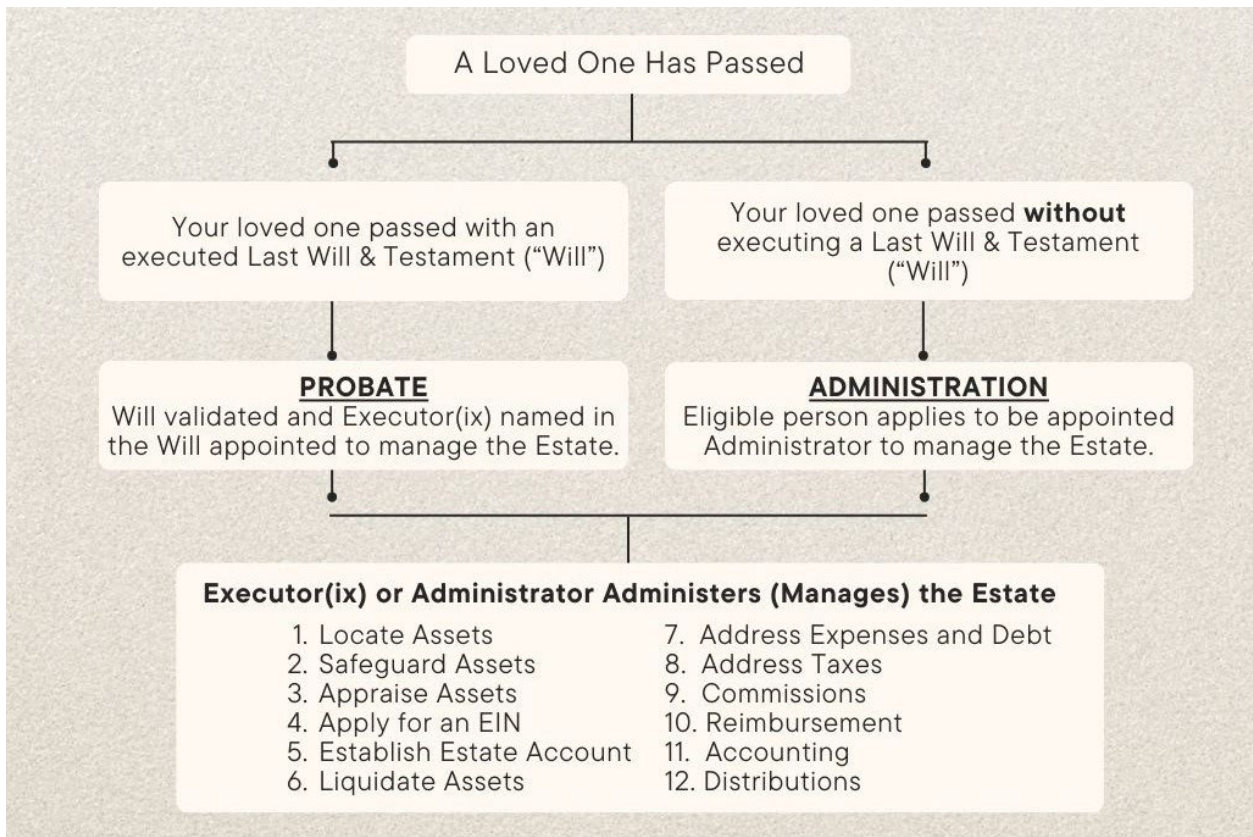
information. While you must abide by the procedures of the appropriate Surrogate, you may find useful information on other New Jersey Surrogate websites.

WHAT TO DO: NEW JERSEY PROBATE AND ADMINISTRATION

Despite its historical relevance, estates can be an area of uncertainty. When a person dies, the management of their estate will be guided by the nature of their remaining assets and whether or not they had a Will.

If your loved one left any assets with a survivorship mechanism, such as jointly held assets and accounts that have properly established beneficiary designations (e.g., bank accounts, investment accounts, savings bonds, life insurance, and retirement accounts), these assets automatically pass to the surviving co-owner or beneficiary and generally do not require the involvement of the court.

However, if your loved one left any estate assets—that is, assets in their sole name without a beneficiary designation, such as real estate, bank accounts, investments, and personal property (e.g., jewelry and artwork), these assets will need to be addressed by a properly appointed representative of the estate. Who can be appointed and what will be done with your loved one’s assets will be guided by either (1) instructions set forth in their Will, or (2) if there is no Will, then New Jersey law.



A Loved One Passed With a Will – Probate

As noted above, probate is the judicial process by which the validity of a Will is determined. For a Will to be valid in New Jersey, it must be in writing, signed by the person who is making the Will, and signed by at least two witnesses.¹⁰

Probate must be initiated with the Surrogate in the county where the decedent resided at the time of their death. A Will cannot be probated until 10 days after your loved one has passed. However, you can collect and submit the necessary paperwork at any time. To admit a Will to Probate, the Executor(s) named in the Will typically must submit the following documents to the Surrogate's office:

- The decedent's death certificate;
- The original Will;
- A list of decedent's next of kin;
- Valid identification; and
- Applicable fees and costs.

Surrogate's Courts typically handle matters where there is no objection, dispute, or controversy. Consequently, no formal appearance before the Surrogate's Court is required. If there is an objection, dispute, or controversy as to the Will, it will be handled by the Superior Court, Chancery Division, Probate Part, and appearance in Court may be necessary.

For Wills that are uncontested, many counties have straightforward rules allowing you to probate documents via mail and will assist with completing the paperwork. Consider the following when gathering the documents:

Death Certificates. Before submitting the Will to probate, you must obtain a certified copy of the decedent's death certificate. Certified copies of Death certificates are available from:

- The Funeral Director.
- Local Registrars for the municipality where your loved one passed.
- The State Bureau of Vital Statistics and Registration.

To obtain the death certificate you will need to provide information about the decedent's passing, the names of the decedent's parents, and proof of your relationship to the person. The proof must establish you are the decedent's parent, legal guardian, or legal representative; or the decedent's spouse/civil union partner; child, grandchild, or sibling, if legal age. *You may find that this process requires you to take the additional step of requesting copies of your own legal documents if not presently available or easily accessible.* There are typically fees for the Death Certificates.

Original Will. Generally, a Surrogate will only probate an original Will, not duplicate copies. When a person executes a Will, they may choose to keep the original or leave it with the attorney who drafted it. You should diligently search for the original Will. Did your loved one have a safe deposit



box? If you locate a copy of the Will, it may indicate where the original is located. You may need to contact the attorney or office where the original Will is held.

If you can only locate a copy of the Will, you still have options. You can file a Complaint with the appropriate Superior Court requesting that a Judge review the circumstances regarding the absence of the original Will and approve the use of the copy. Alternatively, you can pursue Administration of the Estate (as if no Will exists). If the beneficiaries and the shares they would receive would be the same under the intestacy rules as they would be under the original Will, administration may be more cost effective than filing a Complaint with the Court. Keep in mind however, bond requirements might be imposed on the fiduciary that may not have been imposed under the Will. If the beneficiaries or their shares would be different, a Complaint must be filed with the Court.

A “Self-Proving” affidavit is a sworn document that attests to the validity of a will. If the Will has a self-proving affidavit, the Surrogate can authenticate the validity of the Will without additional proof or testimony from the witnesses named in the Will. If the Will does not have such an affidavit, the witnesses who signed the Will need to be contacted.

Next of Kin. The Surrogate will require you to provide the names and addresses (if minors, ages), of the decedent’s next of kin. “Next of kin” refers to the closest living blood relatives of a deceased person and typically includes, but is not limited to, the deceased person’s spouse, children, parents, and siblings. The next of kin will need to be listed even if they are not beneficiaries in the Will or were estranged from the decedent.

Applicable Fees. There are a variety of fees associated with probating a Will. You should consult the appropriate Surrogate website for the full breakdown of the fees. The applicable fees depend on a variety of factors, most often, the length of the Will and the number of Short Certificates needed. The number of short certificates you should request depends on how many assets you will need to address.

Receiving Letters Testamentary. If after the submission of all required documents, the Surrogate deems the Will to be valid and authentic, it will issue “Letters Testamentary” and accompanying certificates to the Executor. These documents are the official court record appointing the Executor and serves as proof to third-parties such as banks and creditors, that the Executor is authorized to obtain and manage the assets of the decedent.

The executor is under a duty to settle and distribute the estate in accordance with the instructions in the probated Will and applicable law as expeditiously and efficiently as possible consistent with the best interests of the estate.¹¹ Within sixty (60) days after receiving the Letters Testamentary, you must send a Notice of Probate informing the beneficiaries of the Will and all next of kin (even if they are not beneficiaries), that the Will of the decedent has been probated. The Notice should provide the name and address of the executor, the date and place of probate, and state that a copy of the Will is available upon request.¹² If there is a charitable gift, you must provide Notice to the



New Jersey Attorney General. Proof of mailing the Notice must be submitted to the Surrogate's office.¹³

A Loved One Passed Without a Will - Administration

If a person dies without a valid Will to probate, New Jersey law will determine who has the right to manage the estate (and provides the manner for the distribution of assets). If the decedent was married or was a registered domestic partner, or a civil union partner, that person has the first right to apply for Letters of Administration. If the surviving spouse or domestic partner or civil union partner renounces, then he/she has the right to ask for the appointment of someone else.¹⁴

If there is no surviving spouse, domestic partner or civil union partner, the next-of-kin in order of degree may apply for Letters of Administration. An individual submitting such a request must provide renunciations from, or proof of notice to, all capable adults whose claim to letters is equal or precedes theirs. Alternatively, if renunciations are not obtained, the applicant must furnish satisfactory evidence that adequate notice of the application has been given to all relevant individuals. The notice period must be a minimum of ten (10) days for New Jersey residents and 60 days for individuals residing outside of New Jersey.

In addition to providing a death certificate and applicable fees, the Administrator will also be required to sign and submit the following documents:

- Application for Administration
- Authorization to Accept Service of Process (Power of Attorney)
- Administrator Qualification
- Affidavit of Assets
- Child Support Verification
- Surety Bond

Application for Administration. This document, which opens up the procedure in the Surrogate's Court, contains information about the administrator and the heirs at law.

Authorization to Accept Service of Process (Power of Attorney). If someone sues the estate and the Administrator cannot be properly served, this document allows the Surrogate to be served on the Administrator's behalf. The Surrogate will then mail a copy of the process to the Administrator at the address on the Authorization.

Administrator Qualification. The Administrator attests that he/she will manage the estate according to law.

Affidavit of Assets. This document should detail all of the assets of the Estate. In some cases, you may not be able to obtain exact asset information without the Letters of Administration for which you are applying. The Surrogate's office can direct you on their procedures in this regard.

Child Support Verification. The Administrator must acknowledge that he/she has received a copy of statute N.J.S.A. 2A:17-56.23b advising the administrator of his/her obligation to determine if a



beneficiary has child support obligations that must be satisfied prior to making distributions to such beneficiary in excess of \$ 2,000.

Signed Surety Bond. A surety bond is like an insurance policy and guarantees that all the estate debts will be satisfied, and remaining assets will be properly distributed to the appropriate heirs. Bond amounts are determined by the Surrogate's Court and are typically based on the value of the estate and possibly the number of beneficiaries.

To obtain a bond, your chosen bonding agency will conduct a financial evaluation to determine your eligibility. If there are credit or other issues found, the company may not issue the bond and you may not be permitted to serve as the administrator.

Once all of these documents are properly executed and approved, the Surrogate will issue Letters of Administration and Short Certificates, which (like "Letters Testamentary"), authorize the administrator to act on behalf of the estate. The amount of Certificates you should request depends on how many assets are in the Estate.

If your loved one's estate is small, the formal administration process may not be necessary. An affidavit of surviving spouse can be issued to the surviving spouse, if the decedent's real and personal assets do not exceed \$50,000.¹⁵ If a decedent does not have a surviving spouse but does have next of kin, and property that does not exceed \$20,000, one of the next of kin, upon consent of the others may apply for an Affidavit of Next of Kin in lieu of Administration.¹⁶



12 STEPS TO SUCCESSFULLY MANAGE AN ESTATE

Whether you have become the Executor or the Administrator of an estate, during the 60-day period after receiving the Letters Testamentary or Letters of Administration, you should begin the process of estate administration. As executor or administrator (collectively referred to as the “fiduciary”) you are responsible for:

- Locating, safeguarding, and appraising assets;
- Applying to the Internal Revenue Service for a tax identification number for the estate;
- Setting up an estate checking account;
- Liquidating assets;
- Determining and paying any outstanding expenses and debts; and
- Addressing taxes.

1. Locating Assets

Review Personal Records: Thoroughly search the decedent’s residence. Examine the decedent’s personal records, such as bank statements, tax returns, and financial documents. Email and incoming physical mail may reveal bills, additional accounts, etc. Even if documents you find are old, consider that the account may still exist and may just be managed electronically. Utilize online resources, including online banking platforms, investment account websites, and public records databases. Local town offices may also be helpful. *If you do not have access to the tax returns, you may be able to request a copy from the IRS with a copy of the death certificate and letters testamentary, or an IRS Form 56.*

Contact Financial Institutions: Reach out to your loved one’s banks, credit unions, and other financial institutions to inquire about any accounts or assets held by the decedent.

Even if an account has a beneficiary designation, you may wish to confirm that the ultimate beneficiary is still living. In some cases where a beneficiary predeceased the account holder, the account may become an estate asset that you are responsible for managing.

Search Safe Deposit Boxes: If your loved one has a safe deposit box, check its contents for important documents, such as deeds, valuable items, or instructions on the location of assets.

Real Estate Records: Check local property records to identify any real estate owned by the decedent. This information is often available through county clerk or assessor’s offices.

If your loved one held property as tenants in common with someone else, there is no right of survivorship or automatic transfer to the surviving tenant. A decedent’s interest in a tenant in common arrangement is an estate asset.



Contact Employers and Retirement Plans: Reach out to your loved one’s former employers to inquire about pension plans, retirement accounts, or life insurance policies that may name beneficiaries.

Search for Unclaimed Property: Check with the New Jersey Unclaimed Property Administration to see if the decedent has any assets or funds that were turned over to the state.¹⁷ Even if you think you have found all of the assets, do not skip this step. According to a Forbes article, in 2020, there was \$49 billion in unclaimed funds waiting to be claimed, and more than \$3 billion in unclaimed money is returned to its owners by the states each year.¹⁸

Hire a Professional Locator: Although not required, a professional asset locator or investigator can help identify and locate assets as they may have access to additional databases and resources.

Social Security Administration: Contact the Social Security Administration to inquire about any death benefits or other financial assistance programs.

2. Safeguarding Assets

Take immediate steps to secure and protect physical assets, such as real estate, vehicles, valuable items, and personal belongings using the following guidelines:

Notify Relevant Parties. Notify financial institutions, insurance holders, creditors, and relevant parties about your loved one’s passing to prevent unauthorized access or transactions.

Identify and Secure Important Documents. Gather and secure important documents, including the will, trust documents, property deeds, and insurance policies, in a safe and accessible location.

Inventory and Appraisal. Create a comprehensive inventory of all estate assets. Consider obtaining professional appraisals for valuable items to determine their market value. See “Appraising Assets” below for more information.

Consider Temporary Guardianship. If there are minor children or dependents, plan for their care and well-being (unless specific instructions are already provided by your loved one’s Will). Establish temporary guardianship if necessary.

Change Locks and Passwords. Change locks on properties to prevent unauthorized access. Change passwords for online accounts, emails, and financial accounts to enhance security.

Notify Credit Reporting Agencies. Notify credit reporting agencies to place a death notice on the decedent's credit report, reducing the risk of identity theft.

3. Appraising Assets

Appraising estate assets is important to determine the date of death value and fair market value of the deceased person's property. These valuations may be needed for tax purposes, sale of



assets and in calculating distributions. Assets that may require appraisal include real estate, personal property, financial accounts, investments, and business interests.

Valuing Real Estate: Research and seek recommendations for a licensed real estate appraiser. Once you have selected an appraiser, request a written agreement or contract outlining the scope of work, fees, and any other terms to provide clarity and protect the estate's interests. Once you receive the completed appraisal outlining the property's fair market value, be sure to review it for accuracy. **Be aware of any encumbrances, liens, or restrictions that may affect the property's value.**

Valuing Personal Property: You may find that for tax purposes, you will need to get an appraisal of personal property. **It is important to find an appraiser who is skilled in the category of item you are seeking to have appraised** such as furniture, jewelry, coins, etc. You should inquire into the appraiser's training and years of experience and fees. It would be helpful to have as many details about the item as possible. The appraisal will be based on factors like condition, rarity, provenance, and market demand.

Valuing Financial Assets: Financial assets like stocks, bonds, and bank accounts are valued based on their market value on the date of death. You should work with financial institutions to obtain accurate date of death values. Some institutions charge a fee to provide this information.

Valuing Business Interests: Valuing a business interest in an estate is a complex process that involves assessing the fair market value of the deceased person's ownership stake in the business. **Consider hiring a professional business appraiser.** You will need to collect and assess comprehensive financial information about the business, including financial statements, tax returns, cash flow statements, and any other relevant documents.

Keep thorough documentation of all appraisal processes for legal and accounting purposes. You should be prepared to address any challenges or disputes that may arise concerning the appraised value, especially if beneficiaries or heirs question the results. In certain cases, such as a prolonged estate administration process, it may be necessary to update appraisals to reflect changes in market conditions or property values.

4. Applying for an EIN

As part of the administration of your loved one's estate you will need to open a bank account to collect assets and pay ongoing expenses. A federal tax identification number (EIN) for the estate is required to open the bank account. You may also need to re-register certain investment accounts in the name of the estate. **Applying for an EIN is free through the IRS website.**¹⁹ Beware of entities charging for this service. To apply for an EIN, you will need:

1. Essential information about the estate, including the legal name of the estate, the address, the fiduciary's name, and Social Security Number (SSN), and the reason for applying.
2. Name and contact information for the responsible party—usually the fiduciary.



Be sure to carefully review the information provided before submitting the application. Incorrect information could result in delays. In most cases, you will receive the EIN immediately. Make a note of the EIN for future reference and save the confirmation notice. These documents serve as proof of the EIN issuance, and you may need it for various transactions. If you prefer not to apply online, you can submit Form SS-4 by mail or apply over the phone by contacting the IRS directly.

5. Setting up an Estate Account

An estate account provides a centralized and separate financial entity for managing your loved one's assets. Keeping estate funds separate from personal funds helps avoid commingling and helps ensure compliance with legal and accounting requirements. Consider the following guidelines for establishing estate account:

- a. **Choose a Bank:** Consider factors such as the bank's location, fees, minimum balance requirements, transaction limits, services, and the ease of working with them for estate matters. Most banks require the executor or administrator of the estate to appear in person to open the account. You will likely need a copy of the death certificate, letters testamentary, your identification, and estate information including the EIN. Some banks have specific forms or procedures for estate accounts.
- b. **Deposit funds into the estate account:** This can include transferring existing assets from other accounts or depositing funds from the estate.
- c. **Keep Records: Maintain organized records of all account-related documents, including account statements, for future reference and accounting purposes.**

6. Liquidating Assets

Having assessed and inventoried your loved one's estate assets, you may find that there is a combination of cash, and assets that need to be liquidated—converted to cash. Property that needs to be liquidated may include:

- Real estate
- Tangible personal property (E.g., cars, furniture, jewelry, collectibles, etc.)
- Intangible personal property (E.g., stocks and bonds).

Before liquidating any property, be sure to consult the Will or any letters of instruction left by your loved one regarding specific bequests to particular beneficiaries. The instructions may be for beneficiaries to take certain personal items as they may agree. To handle assets that do not have specific instructions and tangible property not otherwise taken by beneficiaries, consider the following:

Real Estate: To sell real estate, work with a realtor who has experience in estate administration. If there are tenants residing at the property, seek counsel for proper Notice requirements and applicable rights of each party. Keep in mind there may be expenses for



maintenance and upkeep of the property until it is distributed to the beneficiary or sold. These expenses are attributable to the estate, and not you personally.

Tangible Personal Property: To liquidate tangible personal property, you can:

- Hold an Estate Sale
- Auction Items
- Sell Items at Consignment
- Use Online resale platforms
- When everything of value has been sold, donate what you cannot sell.

Intangible Personal Property: Work with the institution managing the asset to sell them.

7. Paying Outstanding Expenses and Debts

Once the estate account is established, you can begin (or continue) paying your loved one's outstanding expenses and debt from the estate assets. You may find that there is revolving debt, or the like, or there may be property that has outstanding debts such as liens. Liens on the property may impact the ability to sell the property. Assess the validity of each debt by requesting proper documentation from creditors.

If the creditor/lien holder has a legal right to collect the debt, you should still negotiate and try to settle these debts. Negotiating debts may reduce the loss of estate assets and increase the amount of assets that will be distributed to the beneficiaries. Negotiating with creditors can be intimidating but worth it. A creditor may agree to a lesser amount if their payment is made promptly as this may reduce legal fees in pursuing the claim over time. A creditor may also be willing to agree to a reasonable payment plan. Before agreeing to a settlement, a creditor may ask for an informal or formal accounting identifying the assets and liabilities.

Once you have established and negotiated the debts, liquid and liquidated assets can be used to cover the debts as needed. Keep records of all debt payments and consider the areas below that may apply to your loved one's estate:

Payment of Funeral Expenses: Prioritize the payment of funeral and burial expenses. These costs are considered priority claims against the estate.²⁰

Government Benefits: If the decedent received benefits from government agencies, such as Social Security or Medicaid, which were received after the decedent's passing, such payments may need to be promptly reimbursed to the entity.

Handling Secured Debts: Deal with secured debts, such as mortgages or car loans. Determine whether the assets securing the debts will be retained, sold, or transferred to heirs.

Understand Payment Priority: Be aware of New Jersey's priority order for debt repayment as it pertains to estates.²¹ If the applicable assets of the estate are insufficient to pay all claims in full, the fiduciary shall make payment in the following order:

1. Reasonable funeral expenses;



2. Costs and expenses of administration;
3. Debts for services rendered by the Office of the Public Guardian for Elderly Adults;
4. Debts and taxes with preference under federal law or the laws of this State;
5. Reasonable medical and hospital expenses of the last illness of the decedent, including compensation of persons attending the loved one;
6. Judgments entered against the decedent according to the priorities of their entries respectively;
7. All other claims.

You should seek legal advice to navigate complex debt issues, especially if there are disputes, unclear claims, or concerns about the solvency of the estate.

8. Addressing Taxes

As the Executor or Administrator, you are also responsible for fulfilling any outstanding tax obligations and filing necessary tax returns. **It is important to seek guidance from legal and tax professionals regarding the tax deadlines that apply to the estate you are managing as they have a significant impact on the estate and beneficiaries' tax liabilities.** There are also deadlines for certain tax elections available to the surviving spouse, if any, (e.g., spousal elective share), and to beneficiaries for disclaimers. Below is an overview of the taxes that may apply:

a. Federal Taxes

- **Income Tax:** Prepare and file the final income tax return (Form 1040) for the deceased individual for their year of death. Report income received up to the date of death, and if applicable, claim any eligible deductions or credits. *If your loved one failed to file previous tax returns, you may need to file more than the final return.*
- **Estate Tax:** In 2024, the maximum amount of assets you can leave someone free of estate tax is \$13.61 million (\$27.22 million for married couples). This amount is called the “federal applicable exclusion amount.” As the threshold changes from year to year, be sure to check the current limit. If the value of an estate is more than federal applicable exclusion amount, estate tax will be due which currently ranges from rates of 18% to 40%. The estate tax return is due nine months after your loved one’s date of death.²²

b. New Jersey Taxes

- **Income Tax:** Prepare and file the final New Jersey income tax return for the deceased individual (NJ-1040). Report income earned up to the date of death and claim applicable deductions.
- **Estate Tax:** New Jersey eliminated its estate tax in 2018. However, if your loved one died before 2018, their estate may be subject to estate tax.



- Gift Tax: New Jersey does not have a gift tax.
- Inheritance Tax: Currently, **New Jersey is one of six states that has an inheritance tax.** The New Jersey inheritance tax is imposed on Class C and D beneficiaries. Classes of beneficiaries are determined by relationship to the decedent. Class A beneficiaries include the decedent's spouse and lineal ancestors and decedents. There are no longer Class B beneficiaries. Class C beneficiaries are close family relatives, primarily siblings. Class E beneficiaries are charities and governments. All other beneficiaries are Class D beneficiaries. There is no tax on amounts inherited by Class A or E beneficiaries.

There is a \$25,000 exemption for amounts inherited by Class C beneficiaries. The tax rate is 11% on the first \$1,075,000 inherited above the exemption amount, 13% on the next \$300,000, 14% on the next \$300,000, and 16% on the amount above \$1,700,000. Class D beneficiaries can receive \$500 tax free. Inheritances above \$500 are taxed at 15% of the first \$700,000 inherited (with no exemption) and 16% on the amount over \$700,000. State inheritance taxes must be filed, and the tax paid within eight (8) months after decedent's death to avoid interest.

c. Other Tax Considerations

- Income Earned by the Estate: For every year the estate generates more than \$600 of income, a separate tax return for the estate (Form 1041) must be filed. You will also have to file Form 1041 if any of the beneficiaries are a non-U.S. citizens, even if income is less than \$600. Sources of estate income include rental income, interest, dividends, and business income.
- Generation-Skipping Transfer (GST) Tax: This tax is designed to prevent individuals from avoiding estate and gift taxes by passing assets to beneficiaries who are more than one generation below them. These rules apply to asset transfers to recipients, usually grandchildren, who are two or more generations younger than the decedents. Similar to the estate and gift taxes, there are exemptions and exclusions in place.

Once you have managed all assets and paid all estate expenses, debts, and taxes, you will move toward closing out the Estate. New Jersey does not impose a deadline for closing out an estate, however, the fiduciary should endeavor to move the estate to completion as timely and efficiently as possible. Carrying on an estate longer than necessary may result in increased expenses and loss to the estate assets. On the other hand, if the estate has tax liabilities, it would be prudent for the fiduciary to wait until all applicable tax closing/waivers are received before closing the estate.]



9. Commissions

In New Jersey, Administrators and Executors can receive commission for undertaking the management of an estate. If the estate is guided by a Will, the Will may specify the commission structure. Most often, a fiduciary's commission is determined by New Jersey law.

- Commissions in the amount of 6% may be taken on all estate income received by the fiduciary.²³
- Principal or “corpus” is the property of the estate. New Jersey fiduciaries are entitled to commissions of 5% of the first \$200,000, three ½ % on the excess over \$200,000 up to \$1,000,000; and 2% on the excess over \$1,000,000.²⁴

10. Reimbursement

If you have paid costs of the estate out-of-pocket, you can be reimbursed from the estate. To seek reimbursement from the estate, you need to have accurate records, receipts, invoices, and other proof of payments related to estate expenses.

11. Accounting

An accounting is the report of all items of property at their date of death values, income, and expenses of the estate including funeral expenses, taxes, commissions, and distributions to beneficiaries. An accounting can be formal or informal. In New Jersey, informal accounting is more often used because it is simpler and cheaper than filing a formal accounting that requires Court approval. A formal accounting is usually necessary if the parties cannot agree on the informal accounting, if the estate is complex, or if it is requested by the Attorney General in the case of a charitable beneficiary. You should prepare an accounting and provide it to the beneficiaries of the estate for review.

12. Distributions

Distributions to Beneficiaries: If you are an Executor, distributions will be based on your loved one's instructions in their Will. If your loved one died without a Will, distribution of assets will be guided by the New Jersey intestacy laws. **See New Jersey Statutes 3B:5-3 and 3B:5-4** for detailed guidance. *You should postpone any distributions to beneficiaries until at least nine months have passed since Letters Testamentary/Administration were issued to allow for creditors to present claims against the estate. The fiduciary could be held liable for creditors' claims if the fiduciary distributes estate assets before the end of the nine-month period.*

Determining Child Support Obligations Before Distribution: New Jersey law provides that child support judgments are liens against the proceeds of an estate. **You are not permitted to pay an inheritance to a beneficiary prior to obtaining a certification from a private judgment search company stating whether the beneficiary has a child support judgment.** See N.J.S.A.



2A:17-56.23(b) for options to obtain the certification and how to address the results of the certification.²⁵

Release and Refunding Bonds: Once you are ready to make final distributions to the estate's beneficiaries, **each beneficiary must sign a Release and Refunding Bond before a Notary Public or an attorney.**²⁶ If the beneficiary is a minor or incapacitated person, the Refunding Bond must be signed by the guardian of the property. The Release and Refunding bond is intended to accomplish the following:

- **Refunding:** The beneficiary agrees that in the event assets that are distributed to the beneficiary are needed at a later time to pay any new claims against the estate, the beneficiary will return their proportional share of the assets needed to pay the estate debts.²⁷ This protects the fiduciary in the event there are subsequent claims made once distributions have been made.
- **Release:** This document discharges the fiduciary and also serves as proof that proper distribution to the beneficiary has been made, and the beneficiary is satisfied with the performance of the fiduciary.

There is a fee for filing the completed release and refunding bonds. You should consult the fee schedule of the appropriate Surrogate's office. Many county surrogates offer sample release and refunding bond forms for your use. *If a beneficiary refuses to sign the Release and Refunding Bond, you may petition the court for full release of your duties as the fiduciary. If a trust is a beneficiary – the refunding bond must be signed by the trustee.*

CLOSING THE ESTATE

Ultimately, the estate can be closed by:

1. Distributing the remaining funds directly to the estate beneficiaries after each signs a release and refunding bond waiving the beneficiary's right to a formal accounting.
2. Providing an informal accounting to the beneficiaries and having them sign a release and refunding bond approving same.
3. Distributing funds to beneficiaries pursuant to an Order from the Court approving a formal or informal accounting that you filed with the Superior Court.

After paying outstanding expenses and debts of the estate, addressing taxes, and making the applicable distributions to the fiduciary and beneficiaries, the estate account can be closed. Upon proper application, the Surrogate will issue a Certificate of Release which you can use (if applicable) to be released from the Surety Bond.



CONCLUSION

Managing an estate can take a year to several years depending on the size and complexity of the estate. It demands meticulous attention to detail, adherence to legal requirements, and a thoughtful approach to addressing the financial and emotional intricacies involved. As an Executor or an Administrator, you are an essential part of fulfilling a loved one's wishes and preserving familial legacy and harmony. With the guidelines here, and support from your local Surrogate, estate attorney, and/or accountant where needed, you can be confident in what to do when a loved one has passed.

This is NOT legal advice. It was written by a lawyer licensed to practice in New Jersey for the sole purpose of outlining the estate administration process. Individual situations often differ and may require the services of an attorney.



APPENDIX A

NEW JERSEY SURROGATES

<p><u>Atlantic County Surrogate</u> 1201 Bacharach Boulevard Atlantic City, NJ 08401 609-343-2341 https://www.atlantic-county.org/surrogate/</p>	<p><u>Bergen County Surrogate</u> Two Bergen County Plaza, Fifth Floor, Suite 5000 Hackensack, NJ 07601 201-336-6700 https://www.bergencountysurrogate.com/</p>
<p><u>Burlington County Surrogate</u> 50 Rancocas Road 1st Floor P.O. Box 6000 Mount Holly, NJ 08060 609-265-5005 https://www.co.burlington.nj.us/538/Surrogate</p>	<p><u>Camden County Surrogate</u> Forrest Hall 509 Lakeland Road Blackwood, NJ 08012 856-225-7282 https://www.camdencounty.com/service/surrogate-court/</p>
<p><u>Cape May County Surrogate</u> 9 N Main Street, 3rd Floor Cape May Court House, NJ 08210 609-463-6666 https://capemaycountynj.gov/545/Surrogate</p>	<p><u>Cumberland County Surrogate</u> 60 W. Broad Street, Suite A-111 Bridgeton, NJ 08302 856-453-4800 https://www.cumberlandcountynj.gov/countysurrogate</p>
<p><u>Essex County Surrogate</u> 465 Martin Luther King Boulevard, 2nd Fl. Newark, NJ 07102 973-621-4901 https://essexsurrogate.com/</p>	<p><u>Gloucester County Surrogate</u> 17 N Broad Street Woodbury, NJ 08096 856-853-3282 https://www.gloucestercountynj.gov/521/Surrogate-Court</p>
<p><u>Hudson County Surrogate</u> Hudson County Administration Building 595 Newark Avenue, 4th Floor, Room 407 Jersey City, NJ 07306 201-795-6378 https://www.hudsonsurrogate.org/</p>	<p><u>Hunterdon County Surrogate</u> 65 Park Avenue PO Box 2900 Flemington, NJ 08822 908-788-1156 https://www.co.hunterdon.nj.us/329/Surrogates-Court</p>



<p><u>Mercer County Surrogate</u> 640 South Broad Street PO Box 8068 Trenton, NJ 08650 609-989-6331</p> <p>https://www.mercercounty.org/government/county-surrogate</p>	<p><u>Middlesex County Surrogate</u> County Administration Building 75 Bayard Street, 1st Floor New Brunswick, NJ 08901 732-745-3055</p> <p>https://www.middlesexcountynj.gov/government/departments/departments-of-community-services/office-of-the-surrogate</p>
<p><u>Monmouth County Surrogate</u> Hall of Records 1 East Main Street, Room 118 Freehold, NJ 07728 732-431-7330</p> <p>https://www.co.monmouth.nj.us/page.aspx?ID=130</p>	<p><u>Morris County Surrogate</u> 10 Court Street, 5th Floor Morristown, NJ 07960 973-285-6500</p> <p>https://www.morriscountynj.gov/Departments/Surrogate-Court</p>
<p><u>Ocean County Surrogate</u> 118 Washington Street PO Box 2191 Toms River, NJ 08754 732-929-2011</p> <p>https://www.co.ocean.nj.us/OC/surrogate/</p>	<p><u>Passaic County Surrogate</u> 71 Hamilton Street, Room 101 Paterson, NJ 07505 973-881-4760</p> <p>https://www.passaiccountynj.org/government/passaic-county-surrogate</p>
<p><u>Salem County Surrogate</u> 174 East Broadway, 2nd Floor Salem, NJ 08079 856-935-7510</p> <p>https://surrogate.salemcountynj.gov/</p>	<p><u>Somerset County Surrogate</u> 20 Grove Street PO Box 3000 Somerville, NJ 08876 908-231-7003</p> <p>https://www.co.somerset.nj.us/government/elected-officials/surrogate</p>
<p><u>Sussex County Surrogate</u> 3 High Street, Suite 1 Newton, NJ 07860 973-579-0920</p> <p>http://www.sussexcountysurrogate.com/</p>	<p><u>Union County Surrogate</u> Union County Court House 2 Broad Street, Old Annex, 2nd Floor Elizabeth, NJ 07207 908-527-4280</p> <p>https://ucnj.org/surrogate/</p>
<p><u>Warren County Surrogate</u> 323 Front Street</p>	



<p>Belvidere, NJ 07823 908-475-6225</p> <p>https://www.warrencountynj.gov/government/warren-county-surrogate-s-court</p>	
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END NOTES

¹ Eugene A. Haertle, “The History of the Probate Court,” 45 Marq. L. Rev. 547 (1962).

² Ashtabula County, Ohio, “History of the Probate Court” <https://www.ashtabulacounty.us/189/History-of-the-Probate-Court>.

³ Haertle, “The History of the Probate Court,” 45 Marq. L. Rev. 547 (1962).

⁴ Id.

⁵ Id.

⁶ Id.

⁷ Erie County Probate Court, “History of the Probate Court” <https://www.eriecounty.oh.gov/ProbateCourt.aspx>

⁸ Id.

⁹ Mercer County, New Jersey, “The Surrogates’ Office,” <https://www.mercercounty.org/government/county-surrogate/the-surrogates-office>

¹⁰ N.J.S.A. 3B:3-3. If an original Will is found that does not meet these requirements, the court may treat the Will as valid under the harmless error rule. The Will may still be valid if you can establish by clear and convincing evidence that your loved one intended the document or writing to constitute their Will or a revocation/alteration of the Will as the case may be.

¹¹ N.J.S.A. 3B:10-23.

¹² N.J. Ct. R. 4:80-6. The Superior Court of New Jersey, Chancery Division – Probate Part of the County where you are probating, should have forms or other resources with specific guidance on how to complete the Notice.

¹³ N.J. Ct. R. 4:80-1(a)(3).

¹⁴ N.J.S.A. 3B:10-2.

¹⁵ See N.J.S.A. 3B: 10-3.

¹⁶ See N.J.S.A. 3B:10-4.

¹⁷ New Jersey Treasury, “Unclaimed Property Administration,” <https://www.nj.gov/treasury/unclaimed-property/>

¹⁸ Forbes Advisor, “There are Billions of Dollars in Unclaimed Money. Here’s How You Can Claim Yours,” <https://www.forbes.com/advisor/personal-finance/there-are-billions-of-dollars-in-unclaimed-money-heres-how-you-can-claim-yours/>

¹⁹ Internal Revenue Service, “Apply for an Employer Identification Number (EIN) Online,” <https://www.irs.gov/businesses/small-businesses-self-employed/apply-for-an-employer-identification-number-ein-online>

²⁰ N.J.S.A 3B:22-2(a).

²¹ **N.J.S.A. 3B:22-2.**

²² See the IRS website for more frequently asked questions.

²³ N.J.S.A. 3B: 18-13.

²⁴ N.J.S.A. 3B: 18-14.

²⁵ N.J.S.A. 2A:17-56.23(b).

²⁶ N.J.S.A. 3B:23-24.

²⁷ N.J.S.A. 3B:23-26; 27.

