

Probate: New Jersey

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A Q&A guide to the laws of probate in New Jersey. This Q&A addresses state laws and customs that impact the process of an estate proceeding, including the key statutes and rules related to estate proceedings, the different types of estate proceedings available in New Jersey, and the processes for opening an estate, appointing an estate fiduciary, administering the estate, handling creditor claims, and closing the estate. Answers to questions can be compared across a number of jurisdictions (see Probate: State Q&A Tool).

Key Statutes and Rules

1. What are the state laws and rules that govern estate proceedings?

Title 3B of the New Jersey Statutes Annotated sets out the laws and procedures of probate and administration, the laws of wills, and the laws of intestacy (N.J.S.A. 3B:1-1 to 3B:31-84). Additionally, attorneys should consult:

- The New Jersey Court Rules applicable to the surrogate's court and certain probate matters heard in the superior court, which contain additional rules for conducting estate proceedings (N.J. R. 4:80-1 to 4:96-5).
- Local county court rules.
- Laws and regulations regarding the New Jersey inheritance tax (N.J.S.A. 54:33-1 through 54:38A-6; N.J.A.C. 18:26-1.1 to 18:26-12.12). New Jersey repealed its state estate tax for decedents dying after January 1, 2018 (see [State Q&A, Estate Tax: New Jersey](#) and [Practice Note, New Jersey Inheritance Tax](#)).

2. What court has jurisdiction over estate proceedings in your state?

In New Jersey:

- The surrogate's court in the county in which the decedent resided at the decedent's death has jurisdiction over the uncontested administration of a decedent's estate. The surrogate's court generally handles uncontested probate

matters, and usually there is no need for the named executor (or the administrator with priority) to personally appear. The surrogate of each county is the only elected judge in the state of New Jersey.

- The Superior Court of New Jersey in the county in which the decedent resided has jurisdiction over the decedent's estate, where the surrogate's court may not act (for example, in contested administrations), except as otherwise ordered by the superior court.

(N.J.S.A. 3B:2-1 to 3B:2-5, 3B:3-17, and 3B:10-1; N.J. R. 4:82 to 4:85.)

Specifically, the superior court has jurisdiction over:

- Will contests.
- Fiduciary accounts.
- Disputes and doubts arising before the surrogate's court.
- Appeals and review of surrogate court decisions and judgments.
- Matters where:
 - a caveat is filed with the surrogate giving notice that the will is or is to be challenged before the surrogate enters its judgment;
 - doubt arises on the face of the will;
 - the will is lost or destroyed; or
 - an application seeks to admit to probate a writing that does not conform to the statutory requirements for a valid will, but was intended to be a will.

- Applications to appoint an administrator *pendente lite* or other limited administrator.
- Disputes that arise before the surrogate's court (for example, on the validity of the will or any other matter). If a dispute arises, the surrogate's court cannot act without a superior court order. Where the surrogate's court cannot act, it communicates this in writing to the will proponent. In these cases, the will proponent must file an order to show cause and verified complaint with the superior court in the county in which the decedent resided at the decedent's death.
- Cases where the surrogate's court certifies the case to be of doubt or difficulty.

(N.J.S.A. 3B:2-2, 3B:2-3, and 3B:10-12; N.J. R. 4:82.)

For more information on jurisdiction in New Jersey, see [Practice Note, Understanding Probate in New Jersey: Jurisdiction Over Estate Proceedings](#).

Venue for Estate Proceedings

The proper venue for the administration of a domiciliary decedent's estate is the county where the decedent was a resident at death (N.J.S.A. 3B:3-24).

The proper venue for the administration of a non-domiciliary decedent's estates in New Jersey is:

- When the will was not admitted in the decedent's domiciliary jurisdiction, in any New Jersey county where the decedent had real or personal property.
- When the will was admitted in another jurisdiction, in any county in New Jersey.

(N.J.S.A. 3B:3-26 and 3B:3-28; see Question 19: Ancillary Estate Administration.)

Types of Estate Proceedings

3. What are the different types of probate or other estate proceedings or processes for transferring a decedent's assets at death?

In New Jersey, the main types of estate administration are:

- **Probate**, if the New Jersey decedent died with a will (testate) by:
 - the surrogate's court if the will is executed in compliance with the required New Jersey formalities under N.J.S.A. 3B:3-2(a) and does not otherwise involve a matter where the surrogate's court may not act (N.J.S.A. 3B:3-19; see [State Q&A, Wills: New Jersey: Question 6](#)); or

- order of the Superior Court of New Jersey if the will is not executed in compliance with the required New Jersey formalities, such as a holographic will, or involves a matter where the surrogate's court may not act, such as if the will is contested (N.J.S.A. 3B:2-1 to 3B:2-5, 3B:3-2(b), and 3B:3-3(a); see Question 2).

Once the court admits a will to probate, the probate process is not supervised or monitored by the court. Absent the executor or an interested party seeking judicial settlement of a formal accounting by the executor (which would be done through the superior court and not the surrogate's court), or other court-action initiated by the executor or an interested party, estate administration and settlement proceeds informally without court involvement. Probate may be closed informally or formally (see Question 15).

- **Administration CTA** (also called administration *cum testamento annexo* or administration with the will annexed), in certain cases where the decedent dies with a will (testate) (for example, where the testator did not nominate an executor in the testator's will or the nominated executor renounced appointment died or otherwise ailed to qualify or serve as executor). In these cases, the court can appoint an administrator CTA to administer the decedent's will on application of an interested party. Once the administrator CTA is appointed, the estate administration process is identical to other estate administration proceedings. (N.J.S.A. 3B:3-17; N.J. R. 4:80-1(a); see [Practice Note, Understanding Probate in New Jersey: Administrator with the Will Annexed](#).)
- **Administration**, if the New Jersey decedent died without a will (intestate) (N.J.S.A. 3B:10-1). Intestate administration may also occur in the surrogate's court or superior court, as statute provides (see Question 2).
- **Small estate administration of an intestate estate** (small estate administration is not permitted for testate estates), by a surviving spouse, partner in a civil union, domestic partner, or if none, an heir, where the aggregate value of the decedent's estate does not exceed certain statutory amounts (N.J.S.A. 3B:10-3; see Question 19: Small Estate Administration of Intestate Estate by Affidavit).
- **Ancillary estate administration**, which is probate or administration of a nonresident decedent's estate if a nonresident decedent dies owning real or personal property in New Jersey, including:
 - probate or recording, or both, of the nonresident decedent's will where the will was admitted to probate in the jurisdiction where the decedent resided before death, provided the will is valid under the laws of New Jersey (N.J.S.A. 3B:3-26 and 3B:3-27);

- probate of the nonresident decedent’s will where the will was not admitted to probate in the jurisdiction where decedent resided at death and there is no proceeding pending for the probate of the will (N.J.S.A. 3B:3-28); or
- ancillary administration of a nonresident decedent’s intestate estate (N.J.S.A. 3B:10-7).

(See Question 19: Ancillary Estate Administration.)

For more information regarding the types of estate proceedings in New Jersey, see [Practice Note, Understanding Probate in New Jersey](#).

Opening the Estate

4. What is the typical initial filing process for opening an estate? Specifically, please discuss:

- How original wills are handled.
- Whether filing typically occurs by mail, e-filing, or in person and common practices for the most common methods.
- Documents typically submitted to the court with the initial filing.
- Any additional practical advice regarding the initial process for opening an estate.

Original Wills

In New Jersey, a decedent’s original will typically is filed with the paperwork to open the probate, which is either:

- An application with the surrogate’s court.
- A complaint with the superior court, which is filed initially with the surrogate’s court as agent for the superior court. The surrogate is considered a clerk of the superior court in chancery and probate matters. Therefore, though the superior court hears the matter, the pleadings are filed in the surrogate’s court.

(See Question 3.)

A will cannot be admitted to probate for ten days after the testator’s death. However, the application to probate the will can be filed with the death certificate, will, and witness affidavits at any time after death. The court does not enter a judgment or issue letters until the ten-day waiting period expires. (N.J.S.A. 3B:3-22.)

New Jersey does not have a deadline by which a will must be submitted, although it is expected that an executor is

to act within reasonable period after the decedent’s death to offer the will for probate.

Occasionally, an individual seeking to probate a will may need assistance recovering the original will from someone they believe is hiding or withholding it. In this case, the superior court can:

- Compel discovery of the existence or whereabouts of a purported will.
- Require a purported will to be lodged with the surrogate’s court.

(N.J.S.A. 3B:3-29.)

For more information regarding submitting and proving a will in New Jersey, see [Practice Note, Understanding Probate in New Jersey: Filing for Probate](#).

E-Filing

New Jersey does not have electronic filing for actions filed with the surrogate’s court or the Superior Court, Chancery Division, Probate Part. However, most county surrogate courts allow for electronic submission of the data necessary to complete the probate application and related probate documents. The particular county surrogate’s website should be checked for specific requirements of submissions.

Documents Submitted with Initial Filing and Filing Process

For the initial filing to open a probate or administration with the surrogate’s court in New Jersey, the proposed fiduciary must file:

- The original will for a testate estate. If the original will cannot be located, the surrogate’s court may not act. It may be possible to probate a copy of the will or other writing intended as a will in superior court.
- An original death certificate (bearing a raised seal) (see [New Jersey Health: Getting Copies of Genealogical Records](#)). Individuals can order death certificates with or without the decedent’s cause of death. The nominated personal representative or a family member should order multiple certified copies of the decedent’s death certificate, without cause of death, as soon as possible. Certified copies of the death certificate may be needed to transfer the decedent’s assets throughout the estate administration.
- A list of the decedent’s heirs (the names and addresses of those inheriting under intestacy).

- The application for letters testamentary or letters of administration (see Question 5: Application for Probate or Administration).
- A qualification and service of process authorization, which are signed by the proposed fiduciary in the presence of a notary (see Question 7: Qualification as Personal Representative).
- The surrogate's court may also require a photocopy of the proposed personal representative's driver's license.

(See N.J. R. 4:80-1 to 4:80-9.)

If the probate proceeding is to occur with the superior court, the proponent of the will must file an order to show cause and verified complaint with the surrogate, who acts as deputy clerk of the superior court (N.J. R. 4:83-1 to 4:83-5).

If the applicant is opening a testate administration and the will is not self-proving under N.J.S.A. 3B:3-4 or 3B:3-5, the surrogate's court also requires proof of the decedent's valid execution of the will from either:

- One of the attesting witnesses.
- Another individual with knowledge of the facts regarding the testator's proper execution of the will and its attestation by one of the witnesses.

(N.J.S.A. 3B:3-19.)

If no witness to the will is living:

- The signatures of each of the witnesses may be proved by one person.
- Their deaths proved by affidavit without producing certified copies of their death certificates.

(N.J. R. 4:80-2(b).)

For more information regarding submitting and proving the will in New Jersey, see [Practice Note, Understanding Probate in New Jersey: Filing for Probate](#).

Court Forms

Each county has a surrogate's court, many of which provide certain basic information and forms on their respective websites (see, for example, [Bergen County Surrogate's Court: Probate](#)). Selected forms for filing with the Superior Court of New Jersey are available in the forms catalog that is available through the [New Jersey Courts website](#).

Contacting the Court

Many questions regarding estate administrations can be answered by referring to the county surrogate's website. In

addition, the county surrogate's court typically are agreeable to phone inquiries on procedural matters. Additionally, some courts still have limited hours or are still operating by appointment only. Information regarding hours and appointments are typically available on the court's website.

5. Who can petition to open an estate and what information is required for the petition?

New Jersey refers to:

- The pleading to open a testate probate proceeding or intestate estate administration in the surrogate's court as an application (some other states refer to this pleading as a petition). If the probate proceeding is in the superior court, then an order to show cause and a verified complaint for probate is the appropriate terminology.
- The person applying to open a testate probate proceeding or intestate estate administration as an applicant (some other states refer to this person as the petitioner).

(N.J. R. 4:80-1.)

Standing to Open Estate

In New Jersey, generally the executor named in the will must offer the will for probate (see [Original Wills](#)). If the executor fails to do so, any interested person may bring an action to compel the executor to produce the will. An interested person is any person reasonably expected to be affected by the outcome of the estate proceeding, as determined under the circumstances and purpose of a given proceeding.

Any interested person generally has standing to file for administration of an intestate estate.

In a typical estate administration proceeding, interested parties are likely to include, at a minimum:

- The executor or executors named in the will or persons with statutory priority to administer an intestate estate (see Question 7: Priority of Appointment of Administrator).
- The surviving spouse, if any.
- Beneficiaries named in a will, including the trustee of the decedent's revocable trust, if any.
- Intestate heirs if there is no will (see [State Q&A, Understanding Wills: New Jersey: Question 16](#)).
- The decedent's creditors.

Statutes of Limitation

There is no statute of limitations for admitting a will to probate in New Jersey. However, a will cannot be admitted to probate for ten days after the testator's death. Despite this deadline, the application can be filed with the death certificate, will, and witness affidavits at any time after the testator's death. However, the court does not enter a judgment or issue letters until the ten-day waiting period expires. (N.J.S.A. 3B:3-22.)

If an administrator opens what appears to be an intestate estate, and a will is later discovered, or if a subsequent will is discovered after probate of a prior will, then a verified complaint and order to show cause may be filed with the superior court chancery division probate part seeking admission to probate of the after-discovered will. If any interested person contests the admission to probate of the after-discovered will, the procedure followed is that of any other will contest. If no contest is lodged, the after-discovered will is proven before the surrogate. The estate is then administered and distributed under the terms of the after-discovered will. (N.J. R. 4:85-3.) The applicable court rule is silent on whether this action must be commenced prior to the executor or administrator, as applicable, fully distributing the assets of the decedent's estate.

Application for Probate or Administration

The court process for a probate or administration proceeding begins with filing the application for probate or administration, which must state:

- The applicant's residence.
- The decedent's name, date of death, and domicile. In New Jersey, the decedent's domicile at death is essentially the equivalent of the decedent's home. It is the decedent's place of residence accompanied by the decedent's intention to remain there permanently. (*O'Hara v. Glaser*, 288 A.2d 1, 5-6 (N.J. 1972).)
- The date of the decedent's last will and testament, if any (for probate).
- The names and addresses of the decedent's surviving spouse, heir, and other persons, if any, entitled to letters and their relationships to the decedent and, to the best of the applicant's knowledge and belief, any who are unknown or a statement that there are no other heirs.
- The ages of any minor beneficiaries or heirs.
- When the decedent died with a will, whether they:

- had issue living when they made the will; and
 - left any child born or adopted after making the will or any issue of those after-born or adopted children since the date of the will.
- A verification under oath that the statements are true to the best of the applicant's knowledge and belief.

(N.J. R. 4:80-1.)

For information on limited administrations, small estate administration of an intestate estate by affidavit, or ancillary administration in New Jersey, see Question 19.

6. Who does the petitioner have to provide notice to during the estate opening process? Specifically, please discuss:

- Who is entitled to receive notice?
- What notice is required when an estate is open?
- Who has standing to object to the petition for probate or administration?

Who is Entitled to Receive Notice

No Requirement of Prior Notice

New Jersey does not require notice of a probate or an estate administration before admitting a will to probate or appointing a personal representative to administer a testate or intestate estate. However, to administer an intestate estate, the person seeking appointment as administrator must provide the surrogate with both:

- The complete names and addresses of the deceased's next of kin.
- If applicable, a formal written, notarized renunciation of the right to serve as the estate's administrator by every person, if any, with a prior or equal right to the applicant to serve as the estate's administrator.

(See Question 7: Priority of Appointment of Administrator.)

Notice of Probate of a Will

Within sixty days after the court admits a will to probate, the executor must mail written notice of probate to, at their last known addresses:

- The beneficiaries under the will.
- The decedent's spouse, heirs, next of kin and other persons entitled to notice (N.J. R. 4:80-1(a)(3)). New

Jersey statute does not define next of kin, but defines heirs to include those persons entitled under the statutes of intestate succession to the decedent's property (N.J.S.A. 3B:5-3 and 3B:5-4; see [State Q&A, Understanding Wills: New Jersey: Question 16](#)).

(N.J. R. 4:80-1(a)(3) and 4:80-6.)

New Jersey statute does not specify:

- A penalty for failing to send notice of probate within the required sixty-day period. However, failure to do so may toll the time available to contest the probate or the validity of the will (see Question 6: Standing to Object to Probate or Appointment of Personal Representative). There is nothing in New Jersey statute or court rules on how long the statute is tolled. Presumably, general equitable principles apply. This means that, if someone seeking to set aside probate knew of the probate or should have reasonably known of the probate but unduly delayed taking action, that person would likely be estopped from challenging probate, particularly where the estate was administered and distributed in good faith by the executor.
- A requirement to provide notice of probate to beneficiaries of a decedent's revocable trust when the decedent has a revocable trust that is the beneficiary of the residue of the testator's estate from the testator's pour-over will (though notice must be given to the trustee, since the trust is the beneficiary). Though at least one surrogate's court has required that the executor give notice of probate to the beneficiaries of the revocable trust, whether any particular court may require this notice may hinge on whether the executor is also the trustee of the revocable trust. It is the duty of the trustee under New Jersey's Uniform Trust Code to advise the trust beneficiaries of the existence of the trust (N.J.S.A. 3B:31-67).

If the will is to distribute any present or future interest in property for a charitable use or purpose, the executor also must mail a notice of the probate to the New Jersey Office of the Attorney General (N.J. R. 4:80-6).

If the name or address of any person entitled to notice is not known or cannot be determined by reasonable inquiry, then notice of probate must be published in a newspaper of general circulation in the applicable county, naming or identifying those persons with a possible interest in the probate estate (N.J. R. 4:80-6).

New Jersey does not have a similar rule requiring notice of the administration of an intestate decedent's estate once it is opened.

Notice of probate is not given to the decedent's creditors (see Question 12: Creditor Claims).

Contents and Proof of Service of Notice of Probate

The notice of the probate of the will must be in writing and must:

- State that the will was probated.
- Identify the place and date of probate.
- Disclose the name and address of the executor.
- Include a statement that a copy of the will must be provided on request. The executor may provide a copy of the will along with the notice.

The executor must file proof of mailing of the notice with the surrogate's court within ten days of mailing. (N.J. R. 4:80-6.)

Certain surrogate's offices provide information regarding or forms of the notice of probate and the proof of service to the executor after appointment or as part of their forms database through their websites.

Waivers and Consents to Notice of Probate

New Jersey does not provide for waiver or consent to notice. The failure to provide notice of probate simply keeps the statute of limitations to set aside probate open (see Notice of Probate of a Will). An executor should therefore always provide written notice of probate to the decedent's next of kin to start the statute of limitations on a will challenge.

Standing to Object to Probate or Appointment of Personal Representative

Any person aggrieved by the probate of a will or the appointment of a personal representative can contest it by:

- Filing a verified complaint.
- Applying for an order directing all other interested parties to show cause why the relief should not be granted.

(N.J. R. 4:84-1; see *Matter of Margow's Estate*, 390 A.2d 591, 594 (N.J. 1978).)

Objections can be filed in one of two ways:

- In testate administrations, within ten days after a decedent's death or before the presentation of a will to probate, by filing a formal notice with the surrogate's court, known as a caveat, seeking to preclude entry

of a judgment of probate. If a caveat is filed before the entry by the surrogate's court of a judgment for probate of the will, the will cannot be probated without the filing of a verified complaint by way of an order to show cause with the superior court, if the individual filing the caveat refuses to withdraw it from the surrogate's court. (N.J.S.A. 3B:3-22; N.J. R. 4:82.)

- By initiating a court action (filing a verified complaint) to enjoin the estate administration (whether testate or intestate) generally within:
 - four months after the court grants of letters testamentary or letters of administration, or six months for an individual residing out of state when the administration is opened. These periods may be extended by the court up to 30 days only, on a showing of good cause and the absence of prejudice (N.J. R. 4:85-2); or
 - a reasonable time under the circumstances if relief is based on R. 4:50-1(d) (the judgment or order is void); 4:50-1(e) (the judgment or order was satisfied, released, or discharged, or a prior judgment or order on which it is based was reversed or vacated, or it is no longer equitable that the judgment or order have prospective application); 4:50-1(f) (any other reason justifying relief from the operation of the judgment or order); or R. 4:50-3 (fraud on the court).

(N.J. R. 4:85-1.)

The complaint must state the basis for the relief sought along with an order to show cause, served on the appointed fiduciary under N.J. R. 4:67-3, to show cause why the probate should not be set aside or modified or the grant of letters vacated (N.J. R. 4:85-1).

In either scenario, once an objection is filed, the surrogate's court no longer has jurisdiction over the estate (N.J. R. 4:82). Pleadings must be filed with the superior court, which has jurisdiction to hear and determine these controversies (N.J.S.A. 3B:2-2 to 3B:2-5).

Parties initiating an action contesting the probate of the will:

- Seek to litigate the matter before the court.
- Should prepare for all attendant discovery, motion practice and trial preparation required in a civil proceeding, including the costs associated with these processes.

For information on limited administrations, small estate administration of an intestate estate by affidavit, or ancillary administration in New Jersey, see Question 19.

Appointing an Estate Fiduciary

7. How is the person in charge of the estate (referred to here as the fiduciary) appointed? In particular please consider:

- The procedure for appointing a fiduciary when the decedent died with a will.
- The procedure for appointing a fiduciary when the decedent died without a will.
- The procedure for appointing a fiduciary in urgent or unusual circumstances.
- Any restrictions on a person's eligibility to act as fiduciary, including whether an attorney who prepares a will for a client can act as the fiduciary.

In New Jersey, the fiduciary responsible for administering a decedent's estate is known as a personal representative. If the personal representative is:

- Named in the will, the personal representative is referred to more specifically as the executor.
- Not named in the will, the personal representative is referred to more specifically as the administrator.

Appointing a Fiduciary Where Decedent Died with a Will

The proposed fiduciary (the executor named in the will or administrator CTA if not named in the will) can initiate a probate proceeding by filing either:

- An application and other paperwork with the surrogate's court.
- A complaint with the superior court. The filing is through the surrogate's court, which is the deputy clerk of the superior court, chancery division.

(See Question 4.)

No probate of a will can be completed in the first ten days after death (N.J.S.A. 3B:3-22). During this time, any individual may contest the probate of a will or the appointment of a fiduciary by filing caveat with the surrogate's court (see Question 6: Standing to Object). The surrogate's court may accept for filing the application to probate a will (or appoint a fiduciary) before to the ten-day period but does not process the filing until after that time.

Probate Appointment in Surrogate's Court

The probate of a will by the surrogate's court begins with the filing of the application for probate, which when

granted by the court authorizes the executor to act for the estate (N.J. R. 4:80). Each county may have its own procedures, such as:

- Requiring the completion of an information sheet online.
- Requiring the submission of a hard copy of an information sheet in advance of an appointment.
- Requesting that the surrogate's court prepare papers.

Probate Appointment in Superior Court

Probate of a will by the superior court requires the plaintiff to file in a summary manner by way of a verified complaint and order to show cause under N.J. R. 4:67 with the surrogate's court, which acts as the agent (deputy clerk) for the superior court (N.J. R. 4:83-1). The surrogate's court generally sets the return date for the order to show cause. The superior court judge signs (enters) the order to show cause and complete the order to show cause, stating the deadlines under which the answer and other pleadings must be filed. (N.J. R. 4:83-1.)

Priority of Appointment of Personal Representative

If the executor designated under the will is unable or unwilling to serve, the next designated individual must file either the first individual's death certificate or other evidence of inability to serve, or a renunciation of that person's right to serve to qualify (N.J. R. 4:80-1(a) and 4:80-3). If no designated individual is able or willing to serve and all the remaining beneficiaries of the estate agree, it is common practice that the surrogate's court appoints an individual selected by those taking under the will where all such persons provide written consent. This selected individual generally is required to post a bond even where the will would otherwise dispense with a bond (see Question 8).

Appointing an Administrator Where Decedent Died Without a Will

A person may be appointed as administrator of an intestate decedent's estate by filing an application for administration with the surrogate's court. Like an application for letters testamentary, each county may have its own procedures, such as:

- Requiring the completion of an information sheet online.
- Requiring the submission of a hard copy of an information sheet in advance of an appointment.
- Requesting that the surrogate's court prepare papers.

No opening of a proceeding to administer an intestate estate can be completed in the first ten days after death (N.J.S.A. 3B:3-22). During this time, any individual may contest the appointment of administrator by filing caveat with the surrogate's court (see Question 6: Standing to Object). The surrogate's court may accept for filing the application to appoint an administrator before to the ten-day period but does not process the filing until after that time.

Priority of Appointment of Administrator

For an intestate estate, the priority of individuals with the right to qualify as the administrator are:

- The intestate decedent's surviving spouse or domestic partner.
- The intestate decedent's heirs accepting administration.
- Any other fit person, including a creditor, if no application for administration is filed within 40 days after the decedent's death or the decedent had no heirs.

(N.J.S.A. 3B:10-2.)

Between persons equally entitled, the surrogate's court prefer to grant letters to New Jersey residents over nonresidents, unless the best interest of the estate is not served (N.J. R. 4:80-5).

If there is more than one person equally eligible to qualify as administrator, counsel should consider having a potential administrator renounce the right to serve in this capacity because doing so may reduce the cost of the surety bond that must be posted by the appointed administrator or administrators.

Appointing a Personal Representative in Urgent or Unusual Circumstances

There is no formal procedure for appointing a personal representative in urgent or unusual circumstances in New Jersey. The process for opening an estate administration is generally quick in New Jersey where no caveat was filed.

Post-COVID-19 Filing Considerations

Before COVID-19, any person could generally walk into any county surrogate's court without an appointment to probate a will. Currently, the surrogate's courts typically prefer to either prepare the papers themselves or process paperwork prepared by the proposed personal representative's attorney. The county surrogates are now open but generally by appointment only. Attorneys should

call the particular county surrogate's court or review its website before proceeding to inquire as to the process preferred by that particular surrogate's court.

Qualification as Personal Representative

Before the surrogate's court appoints a personal representative, the proposed personal representative must execute and file with the court the required documents (see Question 4: Documents Submitted with Initial Filing and Filing Process).

Personal Representative Qualification

New Jersey statutes provide no specific requirements on whom may serve as personal representative of a decedent's estate. Testators are generally free to appoint whomever they wish, without any residency or domicile requirements. At the time of submitting the application for probate with the surrogate's court, the surrogate requires executors and general administrators (and trustees of testamentary trusts) to sign a qualification affidavit under oath stating that they will well and truly perform the duties of their office by first paying the decedent's debts, then the legacies under any will and, when required, provide an inventory of the decedent's assets (N.J. R. 4:80-4 and 4:96-1).

If the fiduciary is in New Jersey, any person authorized by New Jersey to administer oaths may administer the oath (N.J. R. 4:12-1). Typically, the clerk in the surrogate's office where the papers were filed administers the oath where the filing is done in person. Otherwise, A New Jersey attorney-at-law or any notary public acknowledge the various pleadings. If the fiduciary is outside:

- New Jersey, the oath can be administered by anyone authorized to administer oaths by the laws of New Jersey, the US, or the jurisdiction where the fiduciary is (N.J. R. 4:12-2).
- The US, the oath can be administered by a secretary of embassy or legation, consul general, consul, vice consul or consular agent of the United States, or before a person appointed by commission or under letters rogatory (which is a request by a US judge to the judiciary of the foreign country requesting the act of taking such oath, a time-consuming process utilizing a diplomatic channel or Interpol) (N.J. R. 4:12-3).

Power of Attorney

Before acting, any fiduciary granted letters must file a power of attorney with the surrogate of the county granting the letters, and the power of attorney must:

- Be duly executed in writing.
- State the address of the fiduciary.
- Authorize the surrogate or clerk (as applicable) to receive service of process affecting the estate in the fiduciary's charge.

(N.J.S.A. 3B:14-47.)

Drafting Attorney as Personal Representative

A client may want to name the attorney who prepares an estate plan as personal representative of the estate or as trustee of a testamentary trust. While not prohibited by law, counsel should be cautious in seeking appointment as fiduciary of a client's estate (see generally [Advisory Committee on Professional Ethics: Conflict of Interest - Attorney/Scrivener Serving as Fiduciary for Client](#)).

To prevent a potential conflict of interest, before agreeing to the nomination and drafting the will accordingly, counsel should obtain the client's informed consent in writing. Specifically, counsel should:

- Fully inform the client of the relative advantages and costs of appointing an alternative individual or corporation.
- Disclose potential conflicts that may arise if the attorney chooses to serve as both fiduciary and attorney.
- Explain the financial benefit counsel stands to gain from the appointment.
- Explain that others may serve as fiduciaries and suggest alternatives.
- Document how the client reached the decision to name the attorney as the fiduciary.

(N.J. RPC 1.0(e) and N.J. RPC 1.7(b).)

If it is likely someone will challenge counsel's appointment as fiduciary, counsel should consider involving another lawyer for the limited purpose of providing the client with independent advice on the choice of fiduciary.

Entity as Personal Representative

Entities that may act as representatives of an estate are:

- Any trust company with trust powers in New Jersey.
- All state banking and savings with trust powers in New Jersey.
- All national banking associations and federal savings and loan associations authorized and qualified to exercise fiduciary powers in New Jersey.

Duty of Personal Representative That is or Becomes Unqualified to Act

New Jersey provides that personal representatives may be discharged or removed for office in certain situations (N.J.S.A. 3B:14-18 to 3B:14-22). However, New Jersey does not address the duties of a personal representative that becomes unqualified to act.

For more information on the discharge of a personal representative, see Question 16.

8. Is a fiduciary bond required, and if so, in what circumstances?

New Jersey generally requires fiduciaries to obtain a bond as security for the estate assets. The court may waive the bond requirement if:

- The will specifies no bond is required (this is common in New Jersey wills).
- Administration is granted to the surviving spouse and the surviving spouse is the sole beneficiary of the estate.

(N.J. S.A. 3B:15-1.)

The fiduciary must post a bond when:

- Appointed to administer an intestate estate.
- Appointed in place of the executor named in the will or to serve with the named executor.
- The executor is not a resident of New Jersey, unless the will directs that no bond is required.
- The personal representative is an additional or substituted personal representative.
- The personal representative is appointed for the estate or property of an absent person.
- A beneficiary has a developmental disability and:
 - no guardian was appointed for the beneficiary;
 - the person seeking appointment is not related to the beneficiary; or
 - the total value of the assets of the estate or trust exceeds \$25,000.

(N.J.S.A. 3B:15-1.)

A bond may be required if the personal representative moves out of New Jersey during an estate administration (N.J.S.A. 3B:15-1(h)). Further, even if not initially required, the court may require a fiduciary to furnish a bond when there is proof that the property in the fiduciary's hands is unsafe, insecure, or in danger of being wasted (N.J.S.A. 3B:15-4).

The court determines the amount of the bond, considering the value of the estate and the extent of the personal representative's authority (N.J.S.A. 3B:15-1).

For language for waiving the bond requirement in a New Jersey will, see Question 20.

Bond and Qualification of Personal Representative

As part of a personal representative's qualification, the representative agrees to fulfill the duties of the representative and those statutory duties on which bond substantially is conditioned, including, as required by the court or under statute:

- Paying the debts of the decedent and then the legacies specified in the decedent's will or, if there is no will, under the New Jersey laws of intestate succession.
- Making a true and perfect inventory of the decedent's real and personal property that comes into the representative's hands, possession, or knowledge, or into the hands of any other person for the representative (see Question 12: Estate Inventory).
- Complying with the provisions of state law concerning inheritance taxes (see [Practice Note, New Jersey Inheritance Tax](#)).
- Making a just and true account of the estate administration and settling the account therein within the time required (see Question 15).

(N.J.S.A. 3B:15-5 and 3B:16-2; see Question 7: Qualification as Personal Representative.)

9. How are the key estate fiduciaries compensated?

Personal Representative Commissions

In New Jersey, personal representatives generally are entitled to commissions based on the values of estate income and principal. Unless otherwise stated in the will (or if there is no will), commissions are calculated using statutory rates (see [Income and Corpus Commissions of Personal Representative](#)).

If the will states the commission, that commission is full payment for the representative's services unless the representative files a written renunciation of commissions under the will with the applicable surrogate's court or clerk of the superior court (N.J.S.A. 3B:18-3). When the court discharges a personal representative, the order

includes payment of commissions (N.J.S.A. 3B:14-18; see Question 16).

Co-personal representatives generally split commissions equally. However, a co-personal representative may apply to the court for a greater share of the commissions because the representative did substantially more work or took on more risk in settling the estate. (N.J.S.A. 3B:18-4; see *In re Pearce's Estate*, 24 N.J. Misc. 105 (Orph. 1946).)

Income and Corpus Commissions of Personal Representative

Without court allowance, personal representatives are entitled to an **income** commission of six percent on all estate income received. Income withheld from payment under the law that requires the withholding for income tax or other tax purposes is deemed received by the fiduciary and subject to income commissions. (N.J.S.A. 3B:18-13.)

New Jersey calculates commissions on the **corpus** (the principal) as follows:

- 5% on the first \$200,000 of all corpus received by the personal representative.
- 3.5% on the excess over \$200,000 up to \$1,000,000.
- 2% on the excess over \$1,000,000.
- 1% of all corpus for each additional personal representative, provided no one personal representative is entitled to any greater commission than that which is allowed if there were only one personal representative.

(N.J.S.A. 3B:18-14.)

Without court allowance, the personal representative may take a portion of the corpus commission annually during the administration. If there is only one personal representative, this annual amount equals one-fifth of one percent of the value of the corpus. (N.J.S.A. 3B:18-17.) These annual commissions are subject to review on an intermediate and final settlement of account. The court may disallow them if they exceed compensation permitted by statute. (N.J.S.A. 3B:18-20.) The court reduces the final commission payment by portions taken annually.

If the personal representative does not take commissions annually, the representative may make an *ex parte* application to the court for payment on account of commissions for services to date during the administration. The order is:

- Not binding on the beneficiaries. This means that if the application is approved, the personal representative can

take the requested commissions, but the beneficiaries can still later object.

- Subject to approval on settlement of the personal representative's account.

(N.J. R. 4:88-2.)

Increasing or Reducing Commissions

The court may allow additional commissions on an intermediate basis or at final settlement, for the personal representative's unusual or extraordinary services (N.J.S.A. 3B:18-16).

The court also may reduce corpus commissions on application by a beneficiary showing either:

- The personal representative's services were materially deficient.
- Actual pains, trouble, and risk in settling the estate were substantially less than generally required for estates of comparable size.

(N.J.S.A. 3B:18-14.)

The fiduciary is presumptively entitled to the commission amount dictated by statute. This legal presumption is significant for deducting the personal representative's commission for estate and inheritance tax purposes without a judicial proceeding approving commissions, since most New Jersey estates are settled without incurring the significant time and expense of judicial settlement of the personal representative's account.

For more information regarding settlements of accounts, see Question 15.

Testamentary Trustees and Guardians

New Jersey includes testamentary trustees and guardians as fiduciaries for compensation and separately defines their compensation (N.J.S.A. 3B:18-23 to 3B:18-33). Unless otherwise stated in the will, testamentary trustee and guardian commissions are calculated using the statutory rates for these fiduciaries (see *Income and Corpus Commissions for Testamentary Trustees and Guardians*).

These fiduciaries are entitled to the commission in the will as full payment for services unless they file a written renunciation of compensation under the will with the applicable surrogate's court or clerk of the superior court (N.J.S.A. 3B:18-3).

The court does not allow greater commissions than those authorized in the statutes for testamentary trustees (N.J.S.A. 3B:18-23 to 3B:18-33) unless either:

- The testator both:
 - specifically acknowledges in the testator’s will that the testator is aware of the commissions under statutes; and
 - expressly authorizes payment of excess commissions.
- A court authorizes commissions for unusual or extraordinary services.

(N.J.S.A. 3B:18-31.)

Income and Corpus Commissions for Testamentary Trustees and Guardians

Statutory commissions for these fiduciaries include commissions on both income and principal (corpus) received, and distributions made, by the fiduciary at the statutory rates.

Without court allowance, these fiduciaries are entitled to an income commission of six percent on all income received by that fiduciary. Income withheld from payment under the law that requires the withholding for income tax or other tax purposes is deemed received by the fiduciary and subject to income commissions. (N.J.S.A. 3B:18-24.)

Commissions on the corpus received by a testamentary trustee or guardian are subject to a minimum commission of \$100 annually, and calculated as follows:

- \$5 per \$1,000 of corpus value on the first \$400,000.
- \$3 per \$1,000 on the corpus value exceeding \$400,000.

(N.J.S.A. 3B:18-25(a), (c).)

However:

- Banks, foreign bank, or savings and loan association authorized to exercise fiduciary powers in New Jersey acting as corporate fiduciaries are entitled to reasonable commissions, rather than the commission schedule (N.J.S.A. 3B:18-25(b)).
- On application of an interested person, the court may review the reasonableness of the commissions. However, a fiduciary is entitled at least to the statutory commissions under N.J.S.A. 3B:18-25(a), (c). (N.J.S.A. 3B:18-25(e) and 3B:18-27.)
- If there are multiple fiduciaries, an additional one-fifth of the statutory commissions may be added to the statutory commission for each additional fiduciary, but no single fiduciary may receive any greater a commission than would be allowed if there was just one fiduciary. (N.J.S.A. 3B:18-25.1.)

Commissions on Distributions and Additional Commissions

In addition to annual corpus commissions, testamentary trustees and guardians are entitled to commissions on:

- Distributions to beneficiaries.
- Termination of the trust or guardianship.

The amount of these commissions are:

- To the extent not already taken by the fiduciary, the annual corpus commissions authorized under N.J.S.A. 3B:18-25.
- In addition, if the distribution of corpus occurs:
 - within five years of the date when the corpus is received by the fiduciary, an amount equal to two percent of the value of the corpus is distributed;
 - between five and ten years of the date when the corpus is received by the fiduciary, an amount equal to 1.5 percent of the value of the corpus is distributed; or
 - more than ten years after the date the corpus is received by the fiduciary, an amount equal to one percent of the value of the corpus is distributed.

(N.J.S.A. 3B:18-28.)

If there are two or more fiduciaries, their corpus commissions are the same as for a single fiduciary plus an additional amount of one-fifth of the commissions for each additional fiduciary (N.J.S.A. 3B:18-28(d)).

The court may permit additional corpus commissions, on an intermediate or final accounting, on a showing that the fiduciary rendered unusual or extraordinary services for which the fiduciary should receive additional compensation (N.J.S.A. 3B:18-29).

Compensation on Non-Probate Property

Executors, administrators, and testamentary trustees are also permitted compensation on non-probate property in limited circumstances. The court, on the settlement and allowance of a fiduciary’s accounts and in addition to otherwise allowable compensation, may allow reasonable compensation to the fiduciary for services required by law to be rendered by the fiduciary:

- Related to the apportionment of taxes specified under N.J.S.A. 3B:18-8 between a decedent’s estate and the recipient of the property, or between the decedent’s estate and the property.

- In collecting or attempting to collect the apportionment of the taxes applicable to the property.

(N.J.S.A. 3B:18-9.)

For these purposes, non-probate property is any property, real or personal, tangible or intangible, or any interest or estate in them, that both:

- Does not come into the fiduciary's hands as part of a decedent's estate.
- By operation of law or otherwise:
 - was received or is receivable by anyone other than the fiduciary; and
 - that a taxing authority attempts to tax or does tax as a decedent's taxable estate or as part of a decedent's taxable estate for federal estate tax, New Jersey estate tax, other state or foreign estate taxes, or New Jersey or other state or foreign transfer inheritance, legacy, or succession taxes.

(N.J.S.A. 3B:19-8(b).)

New Jersey estate tax was repealed for decedents dying on or after January 1, 2018 (see [Practice Note, New Jersey Inheritance Tax](#)).

Attorneys' Fees

When the personal representative submits a formal accounting to the court, the court assesses legal fees based on reasonableness (see generally *In re Bloomer's Estate*, 129 A.2d 35, 37 (N.J. Super. App. Div. 1957); see Question 15: Verified Complaint and Accounting). The factors the court may consider in determining if fees are reasonable include:

- The size of the estate and the amount of legal work necessary to bring it to the point of distribution.
- The nature and extent of litigation required on behalf of the estate and the amount at stake.
- Any amounts in dispute or in jeopardy, which are resolved without litigation, as well as the nature and complexity of the problem.

Additionally, the court must consider:

- The time spent by the attorney over the entire period of administration.
- The skill exhibited.
- The danger of financial loss avoided.
- The amount saved through litigation, conciliation, or conference.

- The learning, ability, integrity, and standing of the particular member of the bar.

(*In re Bloomer's Estate*, 129 A.2d 35, 37 (N.J. Super. Ct. App. Div. 1957).)

Compensation of Attorney Acting as Personal Representative

If the personal representative is a New Jersey attorney performing professional services in addition to their fiduciary duties, the court allows the personal representative counsel fees in addition to commissions. Legal fees should not be charged for executorial tasks performed by the attorney. If more than one personal representative performed the professional services, the court apportions the fee among them according to the services rendered by each. (N.J.S.A. 3B:18-6.)

10. What is the level of care that each estate fiduciary owes to the beneficiaries of the estate?

Except as otherwise provided by the terms of a decedent's will:

- The personal representative must observe the standards in dealing with the estate assets that would be observed by a prudent person dealing with the property of another.
- If the personal representative has special skills or is named personal representative based on representations of special skills or expertise, the representative has a duty to use those skills.

(N.J.S.A. 3B:10-26.)

The personal representative must act as to the estate property with the skill and care that a person of ordinary prudence would take with the person's own property (*In re Riscia's Estate*, 432 A.2d 549, 550 (N.J. App. Div. 1981)).

For information on the standard of care for trustees, including testamentary trustees, see [State Q&A, Revocable Trusts: New Jersey: Question 20](#).

Administering the Estate

11. What are the main duties of the estate fiduciary in administering the estate?

In New Jersey, the personal representative generally:

- Files the opening pleadings for an estate proceeding and notifies the interested parties of the estate proceeding (see Question 4).
- Notifies creditors of the estate proceeding and handles any creditor claims (see Question 14).
- Files an estate inventory (see Estate Inventory).
- Closes the estate, which includes an accounting (see Question 15).

Commencement of Duties, Powers of a Personal Representative, and Ratification of Prior Acts

The duties and powers of the personal representative are governed by Article 4 of Chapter 10 of Title 3B of the New Jersey Statutes Annotated (N.J.S.A. 3B:1-2 and 3B:10-19 to 10-32). Personal representatives are fiduciaries acting for the estate's creditors, devisees, heirs, and beneficiaries. The personal representative must:

- Deal impartially as between them and in their best interests.
- Act within the scope of their powers, with the care and prudence that an ordinary person would take with the property of another, and with good faith.

(N.J.S.A. 3B:10-23 and 3B:10-26; *In re Bayles' Estate*, 261 A.2d 684, 688 (N.J. App. Div. 1970).)

The duties and powers of a personal representative begin on appointment. The powers of a personal representative relate back in time so that the personal representative's actions that were beneficial to the estate occurring before appointment have the same effect as those occurring after appointment. (N.J.S.A. 3B:10-19.) Therefore, though the personal representative generally is not empowered to act for the estate before appointment, once the court formally appoints the personal representative, the representative may ratify and approve any pre-appointment acts for the estate.

The representative also may ratify and accept acts for the estate by others where the acts would have been proper for a personal representative (N.J.S.A. 3B:10-20).

Standing to Sue and Be Sued

Except for proceedings not surviving the decedent's death, a personal representative of a decedent domiciled in New Jersey at the decedent's death has the same standing to sue and be sued in the courts of New Jersey and the courts of any other jurisdiction as the decedent had immediately

before the decedent's death (N.J.S.A. 3B:10-25). For a definition of domicile, see Question 5: Application for Probate or Administration.

Possession and Control of the Estate

Except as otherwise provided by a decedent's will, every personal representative must take possession or control of the decedent's property. However, the personal representative may leave with or surrender to any person presumptively entitled to any of the decedent's tangible personal property that property unless or until, in the personal representative's judgment, possession of the property by the representative is necessary for the estate administration. The personal representative's request for delivery of any property possessed by an heir or devisee is conclusive evidence, in any action against the heir or devisee for possession, of that necessity for estate administration. (N.J.S.A. 3B:10-29.)

The personal representative must pay taxes on, and take all steps reasonably necessary to manage, protect, and preserve the estate in the representative's possession. The representative may maintain an action to recover possession of property or to determine its title. (N.J.S.A. 3B:10-29.)

Duty to Settle and Distribute Estate

A personal representative must settle and distribute the estate of the decedent under the terms of the will (if any) and applicable law, as expeditiously and efficiently as is consistent with the estate's best interests. The representative must use the authority conferred on the representative by law, the will's terms (if any), and any order in proceedings to which the representative is a party for the best interests of the estate's successors. (N.J.S.A. 3B:10-23.)

A personal representative must proceed expeditiously with the settlement and distribution of a decedent's estate without adjudication, order, or direction of a court. The representative may invoke the court's jurisdiction in proceedings authorized by law to resolve questions regarding the estate or its administration. (N.J.S.A. 3B:10-28.)

The personal representative's duty (unlike a trustee) is limited to the winding up of the decedent's estate and is temporary in character. The duty is not one of retention and investment but of liquidation and termination. A trustee's duty is not liquidation and termination, but management. (See *In re Bayles' Estate*, 261 A.2d at 688.)

For more information regarding settling and distributing the estate, see Question 15.

Discharge of Decedent's Debts and Obligations

Before making distributions to the decedent's beneficiaries or heirs, the personal representative also must use estate assets to discharge:

- The estate's obligations (the costs of administering the estate) (see Question 17).
- The decedent's debts and obligations (see Question 14).
- Outstanding income taxes and estate and inheritance taxes (see Question 13: Tax Returns).

Maintenance of Decedent's Family

Unless otherwise provided in the will (or regarding the statutory family exemption, if claimed, under N.J.S.A. 3B:16-5), the personal representative cannot apply any portion of the estate in the representative's charge for the maintenance of the decedent's family or other person or for any other expenses incurred regarding that person after the decedent's death (see *In re Atkinson's Estate*, 98 A. 269, 269 (N.J. Err. & App. 1916).)

Powers and Duties of Successor and Co-Personal Representatives

A successor personal representative:

- Has the same power and duty as the original personal representative to complete the estate's administration and distribution as expeditiously as possible.
- Succeeding an executor named in a will, must not exercise any power expressly made personal to the named executor.

(N.J.S.A. 3B:10-31.)

Unless the will provides otherwise:

- If the appointment of one or more co-personal representative terminates, the one or more representatives remaining after the termination may exercise every power exercisable by co-personal representatives before the termination.
- If one of two or more nominated as co-personal representatives is not appointed, those appointed may exercise all the powers incident to the representation.

(N.J.S.A. 3B:10-32.)

Delegation of Duties

Fiduciary delegations of investment and management functions typically occur where there is ongoing administration, such as for assets held in a testamentary trust. The fiduciary may delegate investment and management functions, specifically:

- A fiduciary may delegate investment and management functions that a prudent fiduciary of comparable skills could properly delegate under the circumstances. The fiduciary must exercise reasonable care, skill, and caution in:
 - selecting an agent with special investment skills and expertise and of sound financial standing;
 - establishing the scope and terms of the delegation consistent with the purpose and terms of the trust instrument; and
 - periodically reviewing the agent's actions to monitor the agent's performance and compliance with the scope and terms of the delegation.

The fiduciary complying with these requirements is not liable to the beneficiaries or to the trust for the agent's decisions or actions.

- In performing a delegated function, the agent:
 - owes to the trustee and the beneficiaries the same duties as the fiduciary; and
 - must be held to the same standards as the fiduciary.
- By accepting the delegation of a trust function from the fiduciary of a trust that is subject to New Jersey law, the agent submits to the jurisdiction of the New Jersey courts, even if the delegation agreement provides otherwise.
- If there are two or more fiduciaries serving, only one with special investment and management skills or expertise or who was named in reliance on representations of those special skills or expertise, then the fiduciary or fiduciaries not possessing those special skills or expertise may delegate investment and management functions to the other fiduciary as if the other fiduciary were an agent under this statute.
- A fiduciary must provide reasonable advance written notice when the fiduciary intends to delegate investment and management functions, including the identity of the agent, to the beneficiaries eligible to receive income from the trust on the date of the delegation. On providing this notice, the fiduciary is authorized to delegate investment and management functions.

(N.J.S.A. 3B:20-11.10.)

If the personal representative delegates investment function, it may be appropriate (or required) to reduce the statutory commission to which the personal representative would otherwise be entitled (see Question 9). The delegation statute does not give guidance on what the appropriate reduction in the commission might be.

Delegation by Qualified Bank as Fiduciary

A qualified bank acting as a fiduciary for a trust or an estate may employ other professionals or agents and pay them reasonable compensation, even if those persons are affiliated with the bank, to advise or assist the bank in the performance of its administrative duties and to act without independent investigation on the bank's recommendation, if the bank exercises care, skill, and caution in:

- Selecting the agent.
- Establishing the scope and terms of the agent's duties consistent with the purpose and terms of the governing instrument.
- Periodically reviewing the agent's actions to monitor the agent's performance.

(N.J.S.A. 3B:18-25.2.)

A qualified bank delegating investment functions to an investment adviser must also comply with certain prudent investor rules (N.J.S.A. 3B:18-25.2, 3B:20-11.8, and 3B:20-11.10).

A personal representative is not appointed when using a small estate administration of an intestate estate by affidavit process. For information about the small estate process and appointing a personal representative for limited administration and ancillary administration, see Question 19.

12. What are the key documents and procedures in your state for ongoing estate administration?

In New Jersey, the personal representative generally:

- Files the opening pleadings for an estate proceeding and notifies the interested parties of the estate proceeding, where required (see Questions 4 and 6).
- Handles any creditor claims (see Question 14).
- Files an estate inventory if one is required by the court (see Estate Inventory).
- Files an inheritance tax return, if required (see Question 13: New Jersey Inheritance Tax Return).

- Closes the estate, which may or may not include an accounting (see Question 15).

Once the court admits a will, if any, to probate and appoints a personal representative, the personal representative generally completes the estate administration autonomously, without oversight of the surrogate's or superior court. The personal representative typically is not required to submit any documents to the surrogate's court until the completion of the estate (see Question 15). Even where probate is entered by the superior court due to disqualification of probate through the surrogate's court, the administration proceeds autonomously unless there is a dispute.

For information about key procedures in ancillary estate administration proceedings and disposition of personal property without administration, see Question 19.

Estate Inventory

Filing an inventory with the court is not required unless either:

- The court requires a filing (which is typical in intestacy proceedings but not probate proceedings; a dissatisfied beneficiary may always bring an action to compel an accounting by the personal representative).
- The decedent's family (spouse or child) wants to claim the \$5,000 set off against creditor's claims allowed by statute (personal clothing and up to \$5,000 in personal property items chosen by the decedent's family are exempt from creditor's claims). Making this claim is not a common practice.

(N.J.S.A. 3B:16-2 and 3B:16-5.)

The court cannot require the filing of an inventory or appraisal until three months after the grant of letters, except when the \$5,000 exemption is to be claimed (N.J.S.A. 3B:16-2). This allows the fiduciary a reasonable period to identify the estate's assets and liabilities.

For more information regarding limited administrations, small estate administration of an intestate estate by affidavit, and ancillary administration, see Question 19.

13. What are the due dates for key documents and processes during and after the estate proceeding?

Opening the Estate

In New Jersey, a person challenging admitting the will to probate must file a caveat within the first ten days

following death or at any time before the probate of the will (see Question 6: Standing to Object).

Notice of Probate

After the court admits a will to probate, the executor must provide notice of probate of the will within sixty days of probate. The executor must file proof of service of the notice of probate within ten days after sending the notice of probate. New Jersey does not have a similar rule requiring notice of the administration of an intestate decedent's estate, nor does it require notice before the admission of the will or appointment of a representative. (See Question 6).

Creditor Claims

Creditors may present claims to a personal representative within nine months of the decedent's date of death. A creditor may present a claim after this deadline. However, in this case, the creditor is entitled to payment only to the extent that there are assets still in the estate after claims, devises, or distributive shares paid at that time. (N.J.S.A. 3B:22-4.) For additional deadlines in the creditors claim process, see Question 14).

New Jersey does not have a statutory requirement to notify creditors of a decedent's death. Creditors generally review death records to determine whether to file a claim in an estate administration, or are notified in due course by the fiduciary, as the executor or administrator has a duty to discharge the decedent's debts with estate assets.

Estate Inventory

Personal representatives typically do not file inventories in New Jersey estate administrations. The court generally sets deadlines where it requires a filing. (See Question 12: Estate Inventory.)

Closing the Estate

There is no set time in which a personal representative must settle and distribute an estate. A personal representative must settle and distribute a testate estate under the terms of the will, and as expeditiously and efficiently as is consistent with the estate's best interests (N.J.S.A. 3B:10-23).

The personal representative cannot distribute property in an intestate estate proceeding until one year after the granting of administration unless the court enters an order to limit creditors. In that case, the representative can

distribute the intestate estate's property six months after the order. (N.J.S.A. 3B:23-18.)

For more information regarding closing the estate, see Question 15.

Tax Returns

The personal representative should also arrange for the timely preparation and filing of:

- Any federal estate and New Jersey inheritance tax returns.
- A decedent's final federal and New Jersey income tax returns.
- Any income tax returns not filed that the decedent should have filed for years prior to the decedent's death.
- Any federal gift tax returns that the decedent should have filed during the decedent's lifetime that were not filed (as well as any gift tax return required for a gift made in the calendar year of the decedent's death). For more information on federal gift tax, see [Practice Note, Federal Gift Tax](#).

Federal Estate Tax Return

The due date for filing a US estate tax return ([Form 706](#)) is nine months after the decedent's death (26 U.S.C. § 6075). A six-month extension ([Form 4768](#)) for filing the return is automatically granted if filed before the due date of the return (26 C.F.R. § 20.6081-1(b)).

If an estate has more than one personal representative, only one personal representative needs to sign the estate tax return. However, all personal representatives are responsible for the information contained on the return. (26 C.F.R. § 20.6018-2; see Instructions for [Form 706, Signature and Verification](#).)

For more information on the federal estate tax, see [Practice Note, Federal Estate Tax](#).

New Jersey Inheritance Tax Return

If required, and subject to available extensions, New Jersey inheritance taxes are due and payable at the date of death, but no interest on the tax is due if the tax is paid within eight months following a decedent's death (N.J.S.A. 54:35-1 and 54:35-3; see [Practice Note, New Jersey Inheritance Tax](#)).

Federal Estate Income Tax Return

The due date for the estate income tax return ([Form 1041](#)), if necessary, varies depending on whether the estate is

operating on a calendar year or a fiscal year. The return is due on:

- April 15th of the year following the calendar year in which the estate received the income for calendar year estates.
- The 15th day of the fourth month following the close of the tax year for fiscal year estates.

An automatic five and one-half month extension is available. (See [Instructions for IRS Form 1041](#).)

New Jersey Income Tax Return

The fiduciary of every resident estate or trust must file a New Jersey Gross Income Tax Fiduciary Return ([Form NJ-1041](#)) if gross income, before exemptions or deductions, was more than \$10,000 (prorated for the number of months covered by a part-year return) during the tax year. According to the [instructions of the Form NJ-1041](#):

A resident estate or trust is not subject to New Jersey tax if it does not have any:

- Tangible assets in New Jersey.
- Income from New Jersey sources.
- Trustees or personal representatives in New Jersey.

However, the fiduciary must file Form NJ-1041 for the estate or trust, enclose a statement certifying that the estate or trust is not subject to tax, and check the box on line 27 of the Form NJ-1041.

According to the [instructions of the Form NJ-1041](#), a resident estate or trust means:

- The estate of a decedent was domiciled in New Jersey at their death.
- A trust, or a portion of a trust, consisting of property transferred by will of a decedent domiciled in New Jersey at their death.
- A trust or portion of a trust consisting of the property of a person domiciled in New Jersey at the time that trust or portion of a trust was:
 - then irrevocable, or if it was then revocable and has not subsequently become irrevocable; or
 - revocable when the property was transferred to the trust but subsequently became irrevocable.

The instructions further provide that for the foregoing purposes, domicile is the place an individual regards as their permanent home; the place to which they intend to return after a period of absence. A domicile, once

established, continues until a new, fixed, and permanent home is acquired. No change of domicile results from moving to a new location if the intention is to remain only for a limited time even if it is for a relatively long duration.

A resident estate or trust does not include charitable trusts or trusts that are part of a pension or profit-sharing plan.

For nonresident estates or trusts, the fiduciary of every nonresident estate or trust that derived income from New Jersey sources must file a New Jersey Gross Income Tax Fiduciary Return (Form NJ-1041) if the gross income received from all sources (both inside and outside New Jersey) during the tax year was more than \$10,000 (prorated for the number of months covered by a part-year return) before exemptions or deductions.

For the Form NJ-1041:

- The form must be filed on or before the 15th day of the fourth month following the close of the tax year of the estate or trust.
- There is no extension of time to pay tax due, only to file. Penalties and interest will be charged if the tax is paid after the original due date.

Estates and trusts can receive a five and one-half month extension of time to file if both:

- At least 80% of the tax liability is paid through withholdings, estimated, or other payments by the original due date.
- Either:
 - the taxpayer encloses a copy of its federal application for automatic extension, if filed by paper, and checks the box at the top of Form NJ-1041 (or enters the confirmation number in the space provided at the top of Form NJ-1041 if the extension application or payment was filed online or by phone); or
 - the estate or trust files [Form NJ-630](#), Application for Extension of Time to File New Jersey Gross Income Tax Return, by the original due date of the return.

The fiduciary can also file an extension application online until 11:59 p.m. on the original due date.

Considerations for Creditor Claims

14. What is the procedure for notifying and paying creditors of the estate?

Presenting Claims

Although the personal representative has a duty to discharge the decedent's debts with estate assets, there is no statutory notice provision to creditors. Creditors usually search the death records to verify a debtor's death and obtain information regarding the estate administration.

Creditors must present their claims to the personal representative:

- In writing and under oath.
- Specifying the amount claimed and the particulars of the claim.
- Within nine months from the date of the decedent's death.

(N.J.S.A. 3B:22-4.)

If not so presented, the personal representative is not liable to the creditor regarding any assets that the personal representative disbursed or distributed to other creditors or to beneficiaries (N.J.S.A. 3B:22-4).

A creditor can present a claim to the personal representative after the nine-month deadline and before complete distribution from the estate (N.J.S.A. 3B:22-10). The creditor is entitled to payment on a valid claim presented after that time only to the extent that there are assets still in the estate after claims, devises, or distributive shares paid through that date. (N.J.S.A. 3B:22-4.) If the personal representative distributed all estate assets without receiving a presentation of claim from creditors during the nine-month period following death, a creditor may seek to recover its claim from the beneficiaries receiving the distributions, but there would be no recourse against the personal representative.

A creditor typically presents a claim by filing a proof of claim with the surrogate's court where the will was admitted to probate, although the proof of claim may be served directly on the personal representative. The surrogate's court can receive service for the estate (see Question 7: Power of Attorney).

Allowing, Disputing, and Paying Claims

A personal representative:

- Must allow or dispute a claim, in whole or in part, within three months after presentation.
- Must give notice in writing to the creditor of the decision to allow or dispute the claim.

(N.J.S.A. 3B:22-7.)

A creditor's failure to present a claim within nine months of the decedent's death does not preclude allowance of the claim. A creditor can present a claim to the personal representative at any time before complete distribution from the estate. (N.J.S.A. 3B:22-4 and 3B:22-10.)

Within three months of receiving the personal representative's notice of allowance or dispute of a claim, the creditor must bring an action to recover any amount of the claim disputed by the personal representative. The personal representative is not liable to the creditor for any assets the personal representative disbursed or distributed to other creditors or to beneficiaries before the action was commenced. (N.J.S.A. 3B:22-8.)

A personal representative disputing a claim must notify the creditor to establish the claim by judgment and reserve sufficient funds within the remaining estate assets to satisfy the claim if the creditor prevails (N.J.S.A. 3B:22-11). Where the personal representative has notified the creditor to establish the claim by judgment, the creditor then has one month to begin an action or is then barred from recovering an action against the personal representative to recover on the claim (N.J.S.A. 3B:22-12 and 3B:22-13).

Where the personal representative complied with these creditor claim requirements, a creditor bringing a claim after the personal representative distributed the estate assets must bring an application seeking recovery from the estate's beneficiaries under the devisee's or heir's refunding bond and release forms filed with the surrogate's court by the personal representative (N.J.S.A. 3B:22-16 to 3B:22-18). For more information on refunding bonds, see Question 15: Obtaining a Refunding Bond in Informal or Formal Settlement.

Statute provides for an order of and process for payment of claims when an estate is insolvent (N.J.S.A. 3B:22-2, 3B:22-3 and 3B:22-32 to 3B:22-38).

Exemption from Creditor Claims

Assets exempt from creditors' claims include:

- Proceeds of a life insurance policy on the decedent's life left to a named beneficiary (N.J.S.A. 17B:24-6).
- Personal clothing and up to \$5,000 in personal property items chosen by the decedent's family (N.J.S.A. 3B:16-5).
- An inherited IRA (IRA inherited from a decedent), which is not considered part of a decedent's estate on the decedent's death and is therefore exempt from a decedent's creditors (N.J.S.A. 25:2-1(b); *In re Andolino*, 525 B.R. 588 (Bankr. D.N.J. 2015)).

For more information on creditors' claims generally, see [Practice Note, Understanding Probate: Creditors' Claims \(NJ\)](#).

Closing the Estate

15. What is the process for concluding (or closing) the estate?

Concluding an estate administration occurs either formally or informally:

- Informal settlement involves the personal representative and all interested parties executing a nonjudicial settlement agreement. The interested parties are the estate's personal representative and beneficiaries. The personal representative may or may not prepare an accounting of the personal representative's administration or other form of financial disclosure (see Informal Settlement).
- Formal settlement or conclusion involves the personal representative filing a formal written accounting with the Superior Court in a verified complaint along with an order to show cause (see Formal Settlement).

Informal Settlement

Most New Jersey estates are settled informally, by written agreement of the personal representative and beneficiaries, without any court proceedings for settlement. In certain circumstances, informal settlement is not available to settle a New Jersey estate (see When Informal Settlement is Not Available).

Informal Settlement Agreement

With an informal settlement, the personal representative provides the beneficiaries with a written agreement. The agreement should include sufficient information about the estate administration to enable the beneficiaries to:

- Approve the representative's actions in administering the estate.
- Release the representative from all liability for those actions.

Not providing sufficient financial information and documentation to the beneficiaries increases the possibility for future challenges.

Sufficient information typically includes, as attachments or exhibits to the agreement:

- Copies of the federal estate tax return or New Jersey inheritance tax return.

- Either an accounting of the administration of the estate (see Accountings in Informal Settlement) or estate account statements (bank and brokerage statements detailing changes in investments, distributions, and disbursements). These are important so that the beneficiaries have actual knowledge of:
 - the estate assets received by the personal representative;
 - how the representative used and distributed these assets; and
 - the assets remaining for the personal representative to distribute to the beneficiaries.
- A copy of the will and any operative codicils, if any.

The beneficiaries then sign the informal settlement agreement, including:

- Approving the personal representative's actions.
- Waiving a judicial settlement of formal accounting by the personal representative.
- Approving the personal representative's commissions, if any.
- Approving the attorneys' fees paid by the personal representative in the estate administration.
- Releasing the personal representative from all liability for the estate administration.
- Indemnifying the personal representative from any claims arising out of the representative's estate administration to the extent of each beneficiary's amounts received from the estate.

The personal representative may file the settlement agreement in the surrogate's court to provide a permanent record of the estate settlement. Most commonly, the personal representative does not file the settlement document with the court to maintain privacy.

Accountings in Informal Settlement

Personal representatives generally prefer to account informally, which is less costly and less time consuming than a formal accounting. There is no specific format for an informal accounting. The informal accounting provides the beneficiaries with a summary of:

- The estate assets and income the personal representative receives.
- Estate expenditures (including taxes and debts).
- Distributions of estate assets already made (specific bequests or partial distributions to residuary beneficiaries).
- Proposed final distributions and commissions.

The degree of specificity varies with the circumstances of a particular estate and the parties involved.

After the interested parties review the informal accounting, if there are no exceptions (objections), the personal representative:

- Obtains a signed refunding bond and release, and settlement agreement, from each beneficiary before making the distribution. The settlement agreement should also waive the right to a formal accounting (see *Bartel v. Clarenbach*, 274 A.2d 841, 844-45 (N.J. Super. App. Div. 1971)).
- Files these documents with the surrogate's court (or in certain circumstances, the superior court) requesting to be discharged.

(N.J.S.A. 3B:23-24 and Refunding Bond in Informal or Formal Settlement.)

The filing of the refunding bond and release closes out the estate and discharges the executor or administrator without further liability (N.J.S.A. 3B:17-1). The filed refunding bond is a public record. The court does not issue an order or other record of discharge.

Counsel should advise the personal representative either not to make distributions or to make only partial distributions and hold a sufficient reserve until the personal representative is reasonably certain that all expenses and potential claims against the estate are satisfied or released.

Will Drafting for Informal Settlement

When drafting a will, to expedite the efficient and economical settlement of the estate, the testator may want include express language in the will that a written settlement agreement and waiver of formal accounting signed by all legally competent persons interested in the estate both:

- Is final and binding on all beneficiaries (whether or not then living or determinable).
- Fully discharges the personal representative with respect to the period of that waived formal accounting.

Including such language is consistent with New Jersey law that authorizes settlement agreements to conclude an estate's administration without court intervention. Unless the governing instrument expressly provides to the contrary, an instrument settling or waiving an accounting, which instrument is executed by all persons necessary to be joined as parties in a proceeding for judicial settlement of the account, is binding and conclusive on all other persons with a future interest in the property to the same

extent as that instrument binds the person executing it. (N.J.S.A. 3B:17-13.)

Informal Settlement with Charitable Beneficiary

When a charity is an estate beneficiary, the personal representative must include the New Jersey Office of the Attorney General, Department of Law and Public Safety, Division of Law, in the nonjudicial settlement process. That office generally requires an affidavit of services from both the personal representative and the attorney representing the personal representative to document the services rendered by each to justify the commissions and fees to be approved (see Formal Settlement).

The office requires copies of the nonjudicial settlement agreement and refunding bond and release forms signed by the charity before providing a letter stating that the office has no objection to the proposed settlement. The attorney general's office does not sign the nonjudicial settlement agreement.

When Informal Settlement is Not Available

Informal estate settlement may not be available when one or more of the beneficiaries is under a legal disability (for example, a minor). If so, the beneficiary lacks the legal capacity to approve the personal representative's actions and release the personal representative. In these cases, the personal representative may require either:

- A formal accounting and settlement of the estate in superior court (see Formal Settlement).
- If available, approval of the representative of the incapacitated beneficiary to indemnify and hold harmless the personal representative against any claims the beneficiary might bring following the period of legal disability (for example, for a minor attaining the age of majority). The personal representative would need to assess the degree of protection this agreement to indemnify offers. Virtual representation involving wills generally does not apply without a court confirming that a virtual representative (or *guardian ad litem*) may act for a legally disabled beneficiary (N.J. R. 4:26-2 and 4:26-3). Though the personal representative typically prefers the certainty of a judgment allowing the account, the representative must weigh the costs of the proceeding against the likelihood of a future challenge by, and the strength of any indemnification given on behalf of, the legally disabled beneficiary.

Formal Settlement

A personal representative may want, or the court may require, the representative to settle the representative's

account in the superior court (formal settlement). The court does not act unilaterally in this regard. The court requires the personal representative to formally account only if the personal representative or a person interested in the estate filed a complaint for judicial settlement of the personal representative's account.

Unless for special cause shown, the court does not require the representative to account until after the expiration of one year after appointment. (N.J.S.A. 3B:17-2.) This enables the personal representative to become familiar with the assets, debts, liabilities, and other circumstances of the decedent before having to account.

Summary of Formal Settlement

Formal settlement of a personal representative's administration of an estate involves a judicial proceeding in the Superior Court, Chancery Division, Probate Part according to the settlement and accounting rules under N.J. R. 4:87-1 to 4:87-9.

The judicial proceeding to settle a New Jersey estate formally is begun by filing an order to show cause and a verified complaint, along with an accounting (unless waived), in the Superior Court, Chancery Division, Probate Part, in the county where the court appointed the personal representative. In response to the complaint, the court enters the order to show cause advising the interested parties that the complaint was filed and establishing a hearing date when the court is to hear the matter. The order must state the amount of:

- Commissions claimed by the personal representative (see Question 9: Personal Representative Commissions).
- Attorneys' fees requested (see Question 9: Attorneys' Fees).

(N.J. R. 4:87-1.)

Verified Complaint and Accounting

The verified complaint must state:

- The names and addresses of all persons interested in the account, including any surety on the personal representative's bond.
- Which of the beneficiaries are minors or incapacitated persons and the names and addresses of their guardians or parents or persons standing in the place of parents.
- The period covered by the account.
- A summary of the account (the full account must be attached to the complaint) stating:

- the initial inventory of the estate coming into the personal representative's possession or control;
 - any additions to those assets;
 - the amount of allowances (for example, distributions and disbursements) claimed by the personal representative; and
 - the balance of the estate's assets in the personal representative's possession or control. These items must be stated separately regarding the corpus and income of the estate.
- The personal representative's commissions and attorneys' fees claimed.

(N.J. R. 4:87-2(a) to (d).)

The verified complaint must be filed 20 days before the date the account is to be settled (the hearing date) (N.J. R. 4:87-2(e)).

The full accounting attached to the complaint must include statements:

- Or lists of the investments and assets of the estate's balance in the representative's possession, stating the inventory value or the value when the representative acquired them and the value as of the day of the account, and stating with particularity where the investments and assets are deposited or kept and in what name.
- Of all changes made in the investments and assets since they were acquired (or since the day of the last account), with the dates of those changes.
- As to items apportioned between principal and income, showing the apportionments made.
- As to apportionments made with respect to transfer inheritance or estate taxes.
- Of allocation if the representative paid counsel fees, commissions, and other administration expenses out of corpus, but any benefits of the deductions from corpus were allocated to income beneficiaries for tax purposes.
- Showing how the representative computed the commissions requested, for corpus, and in summary form the assets or property, if any, not appearing in the account on which those commissions are in part based.

(N.J. R. 4:87-3(b).)

Affidavits of Services by Estate Attorney and Personal Representative

The attorney also must file an affidavit of services containing certain statutorily required information for the

application for attorneys' fees at least 20 days before the hearing date (N.J. R. 4:42-9(b) and 4:88-4). The attorney might attach the attorney's firm's computer-generated time records to demonstrate the hours dedicated to the estate administration matter. However, the description of services spelled out in those records should be carefully reviewed and may need redaction to preserve attorney-client privileged information.

The personal representative must also file an affidavit of services stating in detail the nature of the services rendered in administering the estate and specifying the amount of the commissions requested (N.J.R. 4:88-1).

Approving or Objecting to the Account

On filing the verified complaint and accounting, and order to show cause, the court enters the order to show cause advising the interested parties that the complaint was filed and establishing a hearing date when the court is to hear the matter (N.J. R. 4:87-1). Before the court allows the account, the personal representative must:

- Serve all interested persons (generally the same individuals required to be served when the estate administration is opened), including the attorney general's office when a charity is an estate beneficiary, with the order setting the return (hearing) date (N.J. R. 4:87-3 and 4:87-4; see Question 6).
- File proof of mailing and of publication, where ordered, with the court (N.J. R. 4:87-4(c)).

Any interested person may, at least five days before the return date (the hearing date where the account is settled) in an order to show cause, serve on the personal representative written exceptions to any item in or omitted from the account, including any exceptions to the commissions or attorneys' fees requested. The exceptions must state particularly:

- The item or omission excepted to.
- The modification sought in the account.
- The reasons for the modification.

The court may strike an exception because it is not legally sufficient (N.J. R. 4:87-8).

The surrogate, as deputy clerk of the superior court, must audit the personal representative's account and file a written report to the superior court not later than the return date (N.J. R. 4:87-6). If the court appoints a guardian *ad litem* for a minor or incapacitated person, that guardian must file a written report with the court at least seven days before the return date (N.J. R. 4:87-7).

On the hearing date, barring any exceptions to the account, the court issues a judgment:

- Approving the account.
- Discharging the personal representative.
- Directing payment of commissions and attorneys' fees.

If there are exceptions to the court, the court likely schedules discovery (interrogatories or depositions, or both) and the matter proceeds to litigation unless the parties can settle the disputed items.

Since the personal representative usually holds the balance of the estate assets, the judgment also directs distribution of those assets to the beneficiaries as stated in the personal representative's account (the account can include a proposed distribution schedule of the estate assets). The personal representative obtains a signed refunding bond and release from each beneficiary before making the distribution and files these with the surrogate's court (or in certain circumstances, the superior court) requesting to be discharged (N.J.S.A. 3B:23-24; see Obtaining a Refunding Bond in Informal or Formal Settlement).

The filing of the refunding bond and release formally closes out the estate and discharges the personal representative without further liability. Statute requires the personal representative to obtain the refunding bond but does not require the refunding bond to include a release (N.J.S.A. 3B:23-24). In practice, the refunding bond always includes a release, which is effectively a receipt for the payment to the heir and is not a release as to other aspects of the personal representative's administration of the estate. For more information regarding discharging the personal representative, see Question 16.

Before distributing assets of an estate to a beneficiary entitled to more than \$2,000, whether it be an interim or partial distribution or intended as a full and final distribution, the personal representative should complete child support judgment searches for each estate beneficiary (N.J.S.A. 2A:17-56 and 2A:17-56.23b). The representative may need to distribute estate assets to satisfy that judgment. Child support judgment searches are generally completed through a private judgment search company. Although applicable law requires the beneficiary to furnish a certification and search results to the representative, common practice is for the representative to obtain the certification and arrange for the search, with the fee to be paid from the beneficiary's share of the estate. (N.J.S.A. 2A:17-56.23b.)

Distribution Without Settlement

Unless a person interested in the estate formally demands an accounting, the personal representative has no obligation to render an accounting. Without this demand, the personal representative might choose to distribute the assets on hand (after payment of taxes, any debts of the decedent, and the costs of estate administration) without a written agreement or judicial proceeding (see Informal Settlement).

This is generally inadvisable because the representative may not be able to be discharged from liability to the estate or its beneficiaries. The surrogate's court does not discharge the representative until the representative files a refunding bond and release, signed by each of the beneficiaries. Without this discharge, the representative cannot cancel the fiduciary's bond, if any (see Questions 8 and 16).

In certain circumstances, the beneficiaries of an estate may be willing execute refunding bonds and releases without requesting any accounting.

In practice, closing an estate without a written agreement or judicial proceeding is not recommended except potentially where the personal representative:

- Is the sole beneficiary of the estate (or multiple fiduciaries are also the only beneficiaries).
- Determines that there is a minimal likelihood of future challenge by the estate's beneficiaries (for example, a close-knit family). However, this approach is not recommended because family dynamics may change over time, with the possibility of an unanticipated challenge to the personal representative's administration.

Obtaining a Refunding Bond in Informal or Formal Settlement

The personal representative must obtain a refunding bond before distributing assets to an estate beneficiary (N.J.S.A. 3B:23-24).

A refunding bond is a common form that the personal representative fills out and sends to the beneficiary. The Refunding bond must recite the amount or value of assets received from the personal representative and must include a specific statement that the beneficiary agrees to return his inheritance in whole or in part to satisfy debts of the estate. (N.J.S.A. 3B:23-25 through 3B:23-27). Refunding bond information and forms are frequently available on the applicable county surrogate's website

(see, for example, [Mercer County Surrogate: Refunding Bond and Release](#)).

The refunding bond must be in the amount or value of the devise or allotted distributive share and be sufficient, if signed by the devisee or distributee (or that person's guardian) without any sureties (N.J.S.A. 3B:23-25). The personal representative may require a refunding bond before making an interim distribution, or may hold off until final distribution, at which time the refunding bond would include any interim or partial distributions together with the final distribution.

Counsel for the estate should, before distribution:

- Forward the refunding bond to the beneficiary for signature with the proposed distribution amount or assets to be distributed described in the bond.
- Advise the beneficiary that the beneficiary must return the refunding bond to the attorney for the personal representative. The attorney should hold the refunding bond in escrow until the personal representative makes the distributions.
- File the bond in the office of the court where the representative received letters.

(N.J.S.A. 3B:23-24.)

The refunding bond:

- Serves as a receipt to the personal representative as to the amount or asset distributed.
- Should contain a release provision to the personal representative to the extent of the amount distributed.
- Obligates the beneficiary to return to the personal representative the amount distributed to the beneficiary (or a portion of that amount) if debts or other obligations of the estate arise after the distribution when the personal representative no longer has sufficient funds to discharge the obligation (N.J.S.A. 3B:23-26 and 3B:23-27).

For an intestate estate, the refunding bond, marked with the stamp of the surrogate's court confirming that it was filed, is also the evidence required of the surety company to discharge the administrator's bond (see Question 8).

In practice, bonding companies will not cancel the bond until presented with the filed refunding bonds showing distribution of the estate to the heirs at law.

In any case, the attorney should counsel the personal representative either not to make distributions or to make only partial distributions and hold a sufficient reserve until the personal representative is reasonably certain

that all claims and potential claims against the estate are satisfied.

16. Please describe if there is any special action needed to discharge the estate fiduciary from continuing liability for actions taken on behalf of the estate.

In most New Jersey estate administrations, the personal representative is discharged (relieved from liability for actions in administering the estate) when the estate is informally or formally settled (see Question 15). A formal judgment allowing the personal representative's account gives the personal representative the greatest protection from liability regarding the estate administration.

A judgment allowing an account after due notice bars all exceptions to the account which could or might have been taken. This judgment is an approval of the account, the estate investments and other assets, the changes in investments or other assets, and of other estate administration matters. It exonerates and discharges the fiduciary from all claims of all interested parties and of those in privity with or represented by interested parties except:

- For the investments and other assets in the representative's hands at the end of the period covered by the account and assets received by the representative after the close of the account.
- Insofar as the court takes and sustains exceptions to the account at judgment.
- Relief from a judgment in any civil action.

(N.J.S.A. 3B:17-8.)

Expense and Timeline

17. What are the expected costs for a typical estate proceeding?

The primary costs of an estate proceeding in New Jersey are:

- Filing fees in the appropriate court and other fees associated with various stages of the estate administration. These fees for the surrogate's court are set by statute and each court publishes those fees on its website (N.J.S.A. 22A:2-30; see, for example, [Monmouth County Surrogate: Fee Schedule, Probate of Wills and Copies](#)). The personal representative and interested parties may seek to minimize these fees.

For example, the audit fee the court charges to audit the accounting for a large estate can be significant. An informal accounting (meaning no court review and approval of the accounting) avoids incurring an audit fee and avoids the cost of preparing a formal accounting if the estate can be settled by written agreement without an accounting. (See Question 15.)

- Personal representative commissions and attorneys' fees (see Question 9).

The expected costs of an estate proceeding vary depending on:

- The value of the estate, which is used to determine the personal representative's commissions.
- Whether a bond is required.
- Whether there are any challenges to the estate.
- How involved a lawyer needs to be in the estate matters.
- The nature of the assets, whether their values are readily determinable (such as bank accounts and publicly traded marketable securities) or whether appraisals (for example, for real property and closely-held business interests) must be obtained.

18. How long does the typical estate proceeding take?

Estate Administration with the Surrogate's Court

Before COVID-19, a person could apply for and complete probate of a will, with informal settlement (see Question 15: Informal Settlement), within roughly thirty minutes with an in-person visit to the surrogate's court, provided that both:

- The will was:
 - executed in compliance with required formalities; and
 - self-proving or properly witnessed.
- No caveat to the will was filed with the court.

As a result of COVID-19, surrogate's courts began using mail to transmit paperwork required to complete probate. Depending on the county, the process to admit a will to and obtain letters testamentary evidencing the probate and the formal appointment of the executor, could take a few weeks to several months to complete. As of 2023, the surrogate's courts may offer both methods at the applicant's option. Counsel should call or visit the website for a particular county's surrogate's court to confirm the

desired procedure and estimated time to complete the process. These time frames refer to just the process of obtaining letters testamentary. The executor must then administer and settle the estate.

Estate Administration with the Superior Court

If an application to the Superior Court of New Jersey is required to probate a will, the process begins with the filing of a verified complaint and an order to show cause setting a hearing date for the court to consider the application. The court typically schedules the hearing within six weeks of the filing of the complaint to provide adequate time for notifying interested parties of the deadlines within which to respond. If the application is contested, the hearing process to open the estate could take much longer than the average six weeks to complete. An application for administration (where there is no will) typically does not take any longer once the application is submitted to the court, with the exception that the administrator needs to obtain a surety bond as ordered by the court.

Completing an Estate Administration

To complete the administration of the estate, when estate or inheritance tax returns are:

- Not required, the estate administration could be completed any time after the nine-month creditor period has elapsed depending on beneficiary cooperation.
- Required, the process could take on average 18 months to two years to complete (see Tax Returns).

Miscellaneous Estate Proceedings and Processes

19. Please list and describe any simplified or special proceedings or non-court processes for transferring a decedent's assets at death that are available in your state.

In New Jersey, the probate of a will executed with proper formalities generally is a quick and inexpensive process (see [State Q&A, Wills: New Jersey: Question 6](#)). Therefore, New Jersey does not have simplified, expedited, or small estate processes to probate or distribute assets in a

testate estate (where the decedent died with a will) but does in certain circumstances for intestate estates.

Limited Administration

New Jersey has several processes for a fiduciary to fulfill a limited role in certain circumstances, including:

- **Temporary administration (administration *pendente lite*)**, where the court appoints an administrator for a special purpose, with limited powers and duties not including the authority to settle or distribute the estate, pending the appointment of an executor or administrator (or where proceedings are pending for an executor's or administrator's removal). The temporary administrator acts only within the scope of the court's order and generally is restricted to conserving and preserving the decedent's property until the appointment of a general administrator or executor (N.J.S.A. 3B:10-12; N.J. R. 4:82; (see *In re Braunstein's Estate*, 160 A. 650, 651 (N.J. Prerog. Ct 1932) citing *Davenport v. Davenport*, 60 A. 379 (N.J. Eq. 1904).)
- **Administration *ad prosequendum***, involving the administration of an intestate resident or nonresident decedent, where the surrogate or superior court appoints the person entitled by law to general administration as an administrator, without bond, to administer a wrongful death action based on the decedent's death (N.J.S.A. 3B:10-11; N.J. R. 4:82). The court will not appoint an administrator *ad prosequendum* where the decedent dies testate because the executor or administrator with the will annexed must prosecute the action (N.J.S.A. 2A:31-2 and *Schueler v. Strelinger*, 204 A.2d 577, 587 (N.J. 1964)).
- **Administration *ad litem***, where the court appoints a limited administrator to provide a necessary party to an action (to represent the estate) where the decedent or the decedent's estate was a necessary party and if there is no existing executor or administrator of the estate (N.J.S.A. 3B:10-12; N.J. R. 4:82; *In re Dunn's Estate*, 68 A.2d 783, 785 (N.J. Super. Ct. Prob. Div. 1949).

Small Estate Administration of Intestate Estate by Affidavit

New Jersey has an expedited process to distribute an intestate decedent's assets if the decedent's estate is a small estate. For an intestate's estate, a spouse, partner in a civil union, or domestic partner, or, if none, other heirs (those entitled to the assets under the intestacy statutes) may claim assets by filing an affidavit, without additional

court administration or bond, where the total value of the real and personal assets does not exceed:

- \$50,000 for a spouse, partner in a civil union, or domestic partner.
- \$20,000 for other heirs.

Entitlement is established by the claimant filing an affidavit with the surrogate's court. (N.J.S.A. 3B:10-3 and 3B:10-4.)

Claimants properly filing the requisite affidavit (and, for heirs, consents of any similarly situated heirs opting not to serve):

- Can receive the assets of the intestate to the benefit of all the heirs and creditors without administration or bond. The assets are subject to the decedent's debts. However, if the claimant is a spouse, partner in a civil union, or domestic partner (but not an heir), up to \$10,000 is free from the decedent's debts.
- May be sued and required to account as if the court appointed that person administrator.

(N.J.S.A. 3B:10-3 and 3B:10-4.)

Once the claimant files the affidavit, the claimant has all the rights, powers, and duties of an administrator duly appointed by the court for the estate (N.J.S.A. 3B:10-3 and 3B:10-4).

The affidavit:

- For a spouse, partner in a civil union, or domestic partner must:
 - state that the affiant is the surviving spouse, partner in a civil union, or domestic partner;
 - recite the decedent's residence at death;
 - describe the nature, location, and value of the assets; and
 - affirm that the value of the real and personal assets will not exceed \$50,000.

(N.J.S.A. 3B:10-3.) The affidavit is filed and recorded in the surrogate's court or superior court where the proceeding takes place (N.J.S.A. 3B:10-3).

- For heirs must:
 - recite the decedent's residence at death;
 - list the names, residences, and relationship of all the heirs;
 - describe the nature, location, and value of the assets; and

- affirm that the value of the real and personal assets will not exceed \$20,000.

(N.J.S.A. 3B:10-4.)

In either instance, the affidavit must be executed before and filed with either:

- The surrogate's court in the county where the decedent resided at death, or if then a nonresident, where any of the assets are located. If the affiant is domiciled outside New Jersey, the surrogate's court may permit the affidavit to be executed in the affiant's domicile.

- The superior court.

(N.J.S.A. 3B:10-3 and 3B:10-4.)

For a definition of domicile, see Question 5: Application for Probate or Administration.

Ancillary Estate Administration

A decedent domiciled outside New Jersey at death (a nonresident decedent) may die leaving New Jersey real or personal property not passing by title or operation of law. In these cases, appointment of a personal representative in New Jersey or another New Jersey administration process may be necessary to administer or dispose of the nonresident decedent's New Jersey property.

If the nonresident decedent's jurisdiction of domicile:

- Granted probate or administration, an ancillary probate or administration in New Jersey may be required to administer the New Jersey assets.
- Did not grant probate or administration (or none was opened), an applicant must open an original probate or administration in New Jersey despite the decedent being a nonresident at death (N.J.S.A. 3B:3-28).

Ancillary probate or administration in New Jersey is subordinate to probate or administration granted in the jurisdiction of domicile (*Pisano v. B.M. & J.F. Shanley Co.*, 48 A. 618, 620 (N.J. 1901)). For the definition of domicile for estate administration purposes, see Question 5: Application for Probate or Administration.

In some circumstances, the appointment of a local fiduciary in New Jersey may be unnecessary and alternative procedures and processes can be used to administer the nonresident decedent's New Jersey assets. For more information on these alternative procedures and processes, and ancillary estates in New Jersey in general, see [Practice Note, Ancillary Probate in New Jersey](#).

Waiver of Probate Requirements and Formal Probate

20. What types of estate proceedings or probate requirements can be waived by will in your state? Specifically, please discuss:

- Whether any particular language is required to accomplish a waiver and if so, please include the language.
- Whether it is common to waive these estate proceedings or probate requirements.

Waiver of Bond

New Jersey decedents typically waive in their wills any requirement that designated fiduciaries post a bond to qualify to serve as fiduciary. However, the court appointing a personal representative must require the representative to furnish a bond in certain statutorily defined circumstances. (N.J.S.A. 3B:15-1; see Question 8.)

Counsel can include the following bond waiver language in a New Jersey will:

“No bond or other security shall be required of my Executor [or of my Trustee] in any jurisdiction.”

For more information on bond in New Jersey estate administrations, see Question 8.

Waiver of Formal Accounting

New Jersey decedents typically waive the obligation that the personal representative file a formal court accounting to conclude the estate’s administration in their wills.

However, even where a will:

- Waives the requirement of the personal representative to render an accounting, an interested party is entitled to an accounting on filing a verified complaint and an order to show cause for an accounting.
- Does not waive the accounting requirement, the personal representative may, instead of settling the representative’s accounting, file with the court a release or discharge from the beneficiary who is 18 or older and not incapacitated (N.J.S.A. 3B:17-1).

Counsel can include the following accounting waiver language (which is commonly coupled with bond waiver language) in a New Jersey will:

“No bond or other security shall be required of my Executor [or of my Trustee] in any jurisdiction. No Executor [or Trustee] shall be required to account to any court for the administration of my estate[or any trust created hereunder].”

For more information on informal and formal accountings, see Question 15.

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