SPRING 2020

Will Your Assets Pass to Family if You Die Without a Will in NJ?

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planning matters

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the Sally Rosenthal case

by James K. Estabrook, Esq. & Lauren M. Neureither, Esq.

Will your assets pass to family if you die without a Will in New Jersey? Not necessarily. In some cases, a decedent's property can escheat, or revert, to the State of New Jersey when the decedent has living relatives.

Intestacy laws govern what happens to a person's assets when he or she dies without a Will. Intestacy laws do not interfere with assets that are jointly owned—those go to the survivor; or assets that are subject to a separate designation of beneficiary—those go to the designated beneficiary. In New Jersey, heirs must survive the decedent by at least 120 hours to inherit. New Jersey has adopted an intestacy system that only considers relatives in the third branch and closer as "heirs" for purposes of intestate succession. This is known as a parentelic system. The first branch includes the decedent, his children, grandchildren and great-grandchildren. The second branch includes decedent's parents, siblings, and nieces and nephews down the line to great-grandnieces and great-grandnephews. The third and final branch of heirs under the New Jersey intestacy laws consists of the decedent's grandparents and descendants of grandparents including aunts, uncles, and first cousins.

If a decedent dies without a Will and has a spouse or domestic partner, that spouse or partner may not inherit the full estate. This debunks the common misconception that if you pass without a Will, your spouse will automatically receive everything. The surviving spouse or partner's share depends on many things including but not limited to whether the couple had children together, whether there are children from a prior marriage, and whether the decedent has parents who are still living.

Of note, half-blood heirs inherit the same amount as whole-blood heirs in New Jersey. This means if a decedent leaves only siblings as heirs with two full-blood siblings and one half-sibling, all three siblings would inherit equally.

The intestacy laws in New Jersey do not reach back indefinitely until living relatives are found.[1] A 2019 decision out of New Jersey Superior Court shows that even when a person dies with living relatives, his or her assets could end up in the hands of the State of New Jersey. In re: Estate of Rosenthal confirmed that the intestacy laws only reach back to the third branch, which would include grandparents and descendants of grandparents such as first cousins. When Sally Rosenthal died, she did not have a Will, was unmarried, and had no children. Even though Sally had living relatives, the court ruled that her assets be delivered to the New Jersey Unclaimed Property Administrator.

Plaintiffs in Sally's case were the court-appointed Administrators of her estate. They hired a genealogical company to search for Sally's family members. The company attempted to locate heirs from her second and third branches, which would include parents, grandparents and their descendants. After three years of searching, the genealogical company was only able to locate Sally's second cousins and second cousins once removed on her mother's side. The Administrators of Sally's estate then filed an action to compel distribution of the estate to her second cousins and second cousins once removed.

The State of New Jersey insisted that Sally's estate be delivered to the Unclaimed Property Administrator instead. The State argued that the identified relatives were not "heirs" under New Jersey law. The court agreed with the State and found that the distribution of a decedent's assets does not go beyond the third branch, i.e., does not extend to great-grandparents or descendants of great-grandparents. The fourth branch includes great-grandparents and descendants of great-grandparents such as second cousins. Because no member of the third or nearer branch was found, the court directed that Sally's intestate estate be delivered to the New Jersey Unclaimed Property Administrator.

The lesson here is that the only true way to control where your assets go is to execute a Will. Even if the intestacy laws seem to deliver your property according to your wishes, having a Will saves family and friends from hassle and confusion during a difficult time. We urge any adult who does not have a Will to reach out to an estate planning attorney to discuss available options.

1. In re Estate of Rosenthal, No. P-461-18, 2019 WL 5459805 (N.J.Super.Ch. Mar. 06, 2019).

COVID-19 NEWS: postponements of tax return filing & payment dates

Federal Law

On April 9, 2020, the IRS issued Notice 2020-23, indicating that because of the COVID-19 emergency, the due dates for filing federal tax returns and payment of taxes due on or after April 1, 2020 and before July 15, 2020 have been postponed to July 15, 2020. The postponements are automatic; taxpayers are not required to take any action in order to qualify for the relief.

- The due date for individual, corporate, partnership, and estate and trust income tax returns is now July 15, 2020. Estate, gift, and generation-skipping tax returns and payment dates have been similarly postponed.
- First and second quarter estimated income tax payments, due April 15 and June 15 respectively, have a new due date of July 15.
- Taxpayers may file appropriate extension requests by July 15, 2020, to obtain a filing extension. A Form 4868 filed by July 15, 2020 will extend the due date of the 2019 1040 to October 15, 2020, the original extension date for 2019 individual returns. No extension is available for the tax payment—the tax will still be due on July 15, 2020.
- Taxpayers who seek extensions to file U.S. Estate and Gift tax returns may file Forms 4768 and 8892, respectively. No extension may be obtained for the payment of any estate, gift or generation-skipping taxes due on the postponed date of July 15, 2020.

New Jersey Follows Suit

On April 14, 2020 Governor Murphy signed into law the "COVID-19 Fiscal Mitigation Act" (P.L. 2020, c.19) that automatically extends the due date to July 15, 2020 for certain tax filings and payments originally due on April 15, 2020.

Individual gross income tax, partnership, and corporation business tax calendar year filers now have until July 15 to file and pay these taxes, including estimated tax payments due on April 15.

Note that New Jersey second quarter estimated tax payments continue to be due June 15, 2020.

Check our firm website, www.lindabury.com, for further updates about tax legislation.

signing estate planning documents during a pandemic

by Anne Marie Robbins, Esq.

The COVID-19 crisis, and its attendant rules of social distancing, face masks, etc. have presented new challenges to estate planning attorneys in the realm of document executions. How are we advising clients who wish to sign their estate planning documents during this pandemic? It is not possible to easily assemble the normal cast of characters to participate in the execution of client documents. Further, wills and other estate planning documents may not be signed by electronic signature; such documents must be signed in person with a so-called "wet" signature.

Here are some of the ways we have been helping our clients sign their documents in these challenging times.

1. The signing may be handled by the client at home or elsewhere, with execution instructions provided by the attorney.
   - For the will, two witnesses are required, both of whom must be 18 or older and may be "interested" witnesses — family members, beneficiaries or fiduciaries named in the will. (Interested witnesses are allowed in New Jersey but not in New York and certain other states.) Notarization is not required. The will won't be self-proving, but a witness proof can be used at the time of probate.
   - For the power of attorney, a notary (but not witnesses) is required.
   - For the advance directive and HIPAA authorization, either two witnesses (neither of whom may be a health care representative named in the document) or a notary is necessary.
2. The alternative, more formal method, with the attorney presiding and using two witnesses and a notary for all documents, is the "parking lot" or "backyard" execution (the participants meet outdoors, observing social distancing and wearing masks and gloves).
3. If a client is alone and isolated, with no one to serve as witnesses, a "holographic" will may be written and signed by the client. N.J.S. 3B:3-2(b). We do not usually advise this approach because of the possibility that important provisions of the will could be omitted.
4. A will may be signed by the client only, with no witnesses, and could be probated as a "writing intended as a will" under N.J.S. 3B:3-3. If this method is used, probating the will requires filing in Superior Court and is not as streamlined a process as filing with the County Surrogate. However, if no other option exists, this could be attempted.
5. The emergency remote notarization law, A-3903, was signed on April 14, 2020. P.L. 2020, c.26. The law allows a notary to observe a document being signed via audio-visual technology, and then to complete the acknowledgement, recording both signings and keeping the recording for a period of ten years. This law is effective only during the COVID-19 pandemic.

We do not advise the use of remote notarization other than in emergent situations. Most estate planning documents, excepting only powers of attorney, do not require a notary, and notarization alone does not make a will valid.

Using one of the methods outlined above, it is possible to sign estate planning documents even when an in-person meeting in your attorney's office is not advisable.

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