

Frequently Asked Questions

ABOUT EXECUTORS

When two or more Executors are appointed and one or more would like to renounce as long as the Will permits someone to act alone the other executor may renounce and the other may serve alone. Sometimes there are clauses that prohibit anyone to act alone. Our office would prepare the renunciation and require that it be sent to:

Another Surrogate outside of Union County, or

A Notary Public in another state or

A Consulate in another country.

This same rule would apply if there is an Executor out of State that cannot come in to be appointed. The one Executor could apply in person and the other would sign the Acceptance of Service of Process the Qualification and Certification in front of one of the above listed agencies. Therefore there would be one applicant but there would be two named Executors.

When a named Executor is pre-deceased, we will need a death certificate if the deceased executors' estate is not filed in Union County.

When an Executor has been appointed and than dies, the named alternate may appear in our office and ask to be appointed as the Successor Executor if the Will allows a successor.

When an Executor has been appointed and than decides they no long want to act, or cannot act and there are undistributed assets of the estate the Will determines if they can resign. If the Will specifically does not have a provision for resignation they must file a Complaint and Order to Show Cause in Superior Court to be discharged and a Successor appointed. In order to do this they must seek the help of an attorney.

Please be aware that Executors must act together. One cannot do it alone if two have accepted the appointment or the Will demands that no one Executor should act alone.

If the Will is old and all named Executors are deceased, renounce or die before the assets are distributed the closest surviving heirs at law have the same right to act as Administrator(s) with the Will Annexed. This usually happens when Wills are not updated and over time the named Executors have died. The Will would than be admitted to Probate however, the heirs

would have to file an affidavit of assets and probably be required to obtain a Surety Bond.

ADMINISTRATORS

When someone dies without a Will, they are deemed to have died intestate the estate needs to have someone appointed to act on behalf of the heirs, this person would be called an Administrator. This may take several different forms of Administration, the most common are:

Administration

Administration Ad Prosequendum

Administration for a Creditors Complaint

The heir(s) at law with the closest relationship to the decedent has the first right to act. However, if there are degrees of kinship with the same rights, renunciations must be obtained to let someone act on behalf of the estate. Administrations usually require obtaining a Surety Bond to protect the other heirs and creditors of the estate. Anyone who has the right and the means to obtain the bond would be a good applicant to act on behalf of the estate.

Once an Administrator has been appointed on the Surrogate's level they can only be removed by Superior Court. This would required the help of an attorney to file a Complaint and Order to Show Cause in Superior Court. If the Administrator dies before the assets are distributed, a Substituted Administrator may be appointed on the Surrogate's level.

If the decedent has no spouse and there are minor children from a relationship or former union the Legal Guardian of the minor children has the first right to act. The natural parent must apply for Legal Guardianship from the Surrogate's Court in which county the minor children reside. The Legal Guardian than has the right to act on behalf of the minor children or they may renounce in favor or letting someone else act. It does not mean that they are giving up the child's right to inheritance. A Surety Bond would be placed on the estate to protect their interests.

Degrees of kinship and intestacy provisions may be found on our web site.

40 days after death, if no kin have come in to apply to be appointed as the Administrator, a creditor may file a Creditors Complaint for Administration with the Surrogate. This is usually done when there are known assets in the decedents name. A notice must be sent to any known next of kin, or notice

to the Attorney General. A hearing will be set up on the Surrogate's level and the appointment of an Administrator would be made.

Administration Ad Prosequendum is necessary when the family is suing for a wrongful death. The person with the closest kinship would apply and provide the names and address of those who they believed cause the decedent's death. If any award is made to the estate, the administrator would then have to come into the Surrogate's Court to file an Affidavit of Additional Funds.

WITNESSES AND SELF PROVING CLAUSES

In 1978 the law was changed to provide for Self-Proving Wills. The law provided that after September 1, 1978 any Will that was executed may be simultaneously executed, attested and made self-proving by acknowledgment thereof by the testator (person making the will) and affidavits of the witnesses, each made before an officer authorized pursuant to the law.

If the Will submitted for probate is not self proving the applicant would have to find one of the witnesses on the Will. If they are deceased someone who was in the room when the will was executed would be able to act as a witness.

REFUNDING BONDS AND RELEASES

Both probates and administrations require that refunding bonds and releases be filed. In either case the release should be obtained to protect the Executor or Administrator. The release would include the name of the beneficiary, the amount of distribution and be signed in front of a Notary Public. The release and refunding bonds should be filed with Surrogate (filing fee is \$10.00 per 2 page bond, \$5.00 for each additional page) and a filed copy taken to the Surety Company where the bond for the estate was acquired. This will release the Administrator from the surety bond.

As a convenience the office provides one copy of a release and refunding bond per estate, applicants may make the necessary copies required for each estate.

