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New Jersey Elder Lawyer

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## WILLS

For Assistance with Wills, Living trusts or Joint Tenancy in New Jersey

### New Jersey WILLS:

(For Estate Planning in New Jersey Assistance)

In NJ, Wills are not admitted to probate until ten days from a person's passing.

**A Will** is crucial to virtually everyone's estate plan because:

- Nobody left gets out of this world alive.
- You can't take it with you



A Will determines how your estate will be distributed upon your passing. Failure to have a Will may allow the State of NJ to super-impose its own form of estate distribution and estate management. They will also present their own format for establishing a Legal Guardian for minor children and a Trustee to oversee their funds.

The various components of a Will are usually:

- Beneficiary:** person(s) who will receive your estate upon your passing.
- Executor:** person(s) who will oversee the estate settlement and probate process when you've passed. This person must be organized and detailed-oriented.
- Legal Guardian:** person who will raise your minor child(ren). The Legal Guardian will be the "substitute parent" for your child. That person should share your child-rearing values.
- Trustee:** person who will oversee the funds for the minor beneficiaries until they have reached a designated age. This person should be sensitive to a growing child's needs – but also recognize the "value of a dollar."
- Designated – Age:** The age a beneficiary will have to attain before receiving your bequest outright.

Sometimes, people name the same person to serve in two or more categories (i.e. Executor, Legal Guardian, Trustee). Other times, people want to name different individuals in order to establish a system of checks and balances.

### Dis-Inheriting a Beneficiary

This is a drastic step and generally should be done with the most careful consideration. Once you've passed on, the provisions cannot be changed!

One cannot totally dis-inherit a spouse in NJ. By statute, they must leave at least a "1/3 Augmented Estate" to their spouse.

The calculation of this "1/3 Augmented Estate" is very complicated and generally speaking, a post-mortem accountant will have to be engaged on your passing.

One can totally dis-inherit a child but it must be clear, in the text of the Will, that such was willful and deliberate. It's not a good idea to give a reason for the dis-inheritance.

i.e. A Will says a child is being dis-inherited because said child has never kept in touch with the parent.

Upon the parent's death, the child brings phone records, e-mails, etc. showing that they kept in contact with the parent and was concerned about their parent's welfare.

Codicils are minor amendments to a Last Will and Testament (i.e. change of Executor, Guardianship, Trustee, Age of Distribution). Where a Codicil seeks to dis-inherit an existing beneficiary, it is a better practice to create an entirely new Will.

Wills, like Revocable Living Trusts and other estate planning documents, can contain death-tax planning provisions.

### **VERY IMPORTANT:**

Wills do not automatically change the beneficiary designations on your pensions, insurance policies, deferred compensation plans the the like. They do not alter any assets that are held in joint tenancy with another. They do not supersede any payable-on-death designations.

If one wants these plans to pass pursuant to the formula stated in the Will, then changes to these plans must be made!!

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## **James E. De Martino, Attorney**

**Elder Law and NJ Estate Planning Strategies**

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