

Intestacy [Someone died and no Will]

Intestacy is the condition of the **estate** of a person who dies owning property greater than the sum of his or her enforceable debts and funeral expenses without having made a valid **will** or other binding declaration; alternatively where such a will or declaration has been made, but only applies to part of the **estate**, the remaining **estate** forms the "Intestate Estate". *Intestacy law*, also referred to as *the law of descent and distribution* or *intestate succession statutes*, refers to the body of **common law** that determines who is entitled to the property from the estate under the rules of **inheritance**. See <http://en.wikipedia.org/wiki/Intestacy>

INTESTACY

According to the Bergen County Surrogate, It is estimated that almost one third of the persons who die this year, will die without a will. See http://www.co.bergen.nj.us/Surrogate/BCSC_Intest.htm

The estate of every Bergen County resident must be settled with the County Surrogate's Court unless the deceased owned no assets individually in New Jersey. Except in that limited circumstance, an estate must be presented to the County Surrogate before disbursement of the deceased's assets can occur. This estate settlement requirement applies whether the person died with or without a will.

The estate of a person who dies without a will is called an "intestate" estate. The Administrator's responsibilities include notifying the deceased's next of kin of his/her death, assembling the estate's assets and disbursing those assets according to law. The applicant need not be an attorney. In fact, most applicants complete the entire Surrogate's Court process without the need for an attorney. However, if you feel more comfortable bringing an attorney to the Surrogate's Court, you may certainly do so.

To apply to be the Administrator of an intestate estate, a person must bring the following to the County Surrogate's Court: (1) The original death certificate with raised seal; (2) An estimate of the gross value (but not an item-by-item description) of the estate covering all real estate and non-real estate (personal) assets; (3) The complete names and addresses of the deceased's next of kin; (4) A blank New Jersey check or cash for fees-the average fees, excluding bonding costs, are \$150-\$250); (5) A formal, written Renunciation of the right to serve as the estate's Administrator signed (in the presence of a Notary Public) by every person, if any, who has statutory preference over the applicant to serve as the estate's Administrator.

As a matter of law, the family members of the deceased have the first right to serve as the Administrator, in the following order of preference: spouse, children, parents, brothers and sisters. Should no family member seek appointment, then a creditor or anyone else may do so. A person who renounces the right to serve as Administrator may do so without disclaiming the right to receive any of the deceased's assets. (In contrast, by having a will, a person can

choose the individual(s) he/she wishes to take charge and distribute his/her estate's assets (the "Executor(s)"). Source: See http://www.co.bergen.nj.us/Surrogate/BCSC_Intest.htm

Once the above-described five items have been received, the Surrogate will appoint the applicant as the Administrator of the intestate estate. In most cases, the Administrator must be bonded until the estate has been properly assembled and distributed. This bonding fee is in addition to the \$150-250 in average fees paid by the person seeking to be approved as Administrator. Bonding is required to protect the creditors and beneficiaries of the estate from the possibility that the Administrator will misuse his/her authority to their financial detriment.

There are, however, exceptions to the bonding requirement for intestate estates. If the deceased has a surviving spouse and no surviving parent or child, the surviving spouse need not post a bond. If the deceased left a surviving spouse and a surviving parent or child, then there will be no bond required of the surviving spouse for the first \$50,000 of the estate and one-half of the remainder. Otherwise, the cost of bonding is fixed on the value of the estate. Bond premiums are currently \$100 per year, if the estate is worth \$18,000 or less; \$525 per year, if the estate is worth \$100,000 or less. (By way of comparison, a person can have a simple Will drafted by an attorney for \$250-\$350 and the will can state that the person taking charge of the estate's assets, the "Executor", shall serve without any bond.)

After the Administrator has been appointed and bonded, the Surrogate's Court will then issue Surrogate's Certificates (also known as Letters of Administration) that are used to assemble and transfer the intestate's assets. It is recommended that you order several copies of these Certificates, especially if the assets are being held by several banks, brokerage firms, pension plans and insurance companies. They will also be needed to sell or transfer all real estate assets. Along with the Certificates, a General Information brochure regarding the New Jersey Inheritance Tax is sent by the Surrogate's Court to the Administrator by mail within 5-7 business days of his/her appointment.

Administration of the estate cannot be first completed until several additional steps are taken. First, the Administrator must gather the assets, pay the just debts and taxes, and then distribute the balance of the estate's assets in accordance with the law. Second, once all assets of the estate have been disbursed, the Administrator must have each recipient sign a Refunding Bond. The Administrator should also have the recipient(s) sign a Release at the same time. The Surrogate's Court provides, without charge, a form combining a Release and Refunding Bond. The executed Release and Refunding Bond (signed by the recipient in the presence of a Notary Public) should then be filed with the Surrogate's Court at a cost of \$10.00 per Bond.

Source: See http://www.co.bergen.nj.us/Surrogate/BCSC_Intest.htm

The laws of the State of New Jersey provide for the assets of the intestate estate to be

distributed to the next of kin by "intestate succession" as follows:

I. If you die leaving a spouse but no children, grandchildren or parents, the surviving spouse receives all.

II. If you die leaving a spouse and children who are also the children of the spouse, the spouse receives the first \$50,000 plus one-half of the balance of the estate. The children receive the other one-half of the balance divided equally amongst them. If one of your children dies leaving children then your grandchildren take their deceased's parent's share. However, if all of your children have died before you then all of your grandchildren will share equally.

III. If you die leaving a spouse and children who are not also the children of that spouse, the spouse receives one-half, the children receive one-half divided equally and, if applicable, the grandchildren take their deceased parent's share unless all the children are deceased. Should that occur, all the grandchildren share equally.

IV. If you die leaving children but no spouse, the children receive all divided equally among them. If there are grandchildren, they take their deceased parent's share, unless all the children are deceased. In that event, all the grandchildren share equally.

V. If you die leaving a spouse but no children or grandchildren, and if your mother or father is still living, your spouse receives the first \$50,000 of your estate plus one-half of the balance and your parents (or parent, if only one survives you) receives the remainder.

VI. If you die leaving no spouse, no children, no grandchildren, no grandchildren and one or both of you parents survive you, the surviving parent or parents take all divided equally. If no parent survives, then your surviving brothers and sisters receive all divided equally.

VII. If you die leaving no surviving spouse, children, grandchildren, parents, brothers or sisters, then the estate will be divided equally among those people surviving you in the closest degree of kinship (starting with nieces and nephews) until an heir is found if possible.

VIII. If you die leaving no surviving next of kin without a Will, your estate assets escheat to the State of New Jersey.

In a related manner, in addition to the appointment of an Administrator for an intestate estate, if the count resident dies leaving a child under 18 years of age and there is no other legal guardian for that minor child, then the Bergen County Surrogate must appoint that minor child's guardian. The procedure for this appointment is similar to the application and bonding process for an Administrator in the sense that the law gives certain family members priority to serve as guardian of the deceased's minor child, while allowing those lower on the priority ladder to serve as long as the appropriate written renunciations have been received by the Surrogate. (In contrast, if the person who died had a will, the deceased could have designated

the guardian(s) of his/her minor child in the will and this designation would have been binding upon the Surrogate and all others.

Source: See http://www.co.bergen.nj.us/Surrogate/BCSC_Intest.htm

Kenneth Vercammen is the 2008 Municipal Court Attorney of the Year by the Middlesex County Bar Association. He was selected one of only three attorneys as a Super Lawyer 2008 in NJ Monthly in the Criminal – DWI category. Kenneth Vercammen was the NJ State Bar Municipal Court Attorney of the Year and past president of the Middlesex County Municipal Prosecutor's Association. □ □ He is the past chair of the NJ State Bar Association Municipal Court Section. He is the Deputy chair of the ABA Criminal Law committee, GP Division.

KENNETH VERCAMMEN ATTORNEY AT LAW
2053 Woodbridge Ave. Edison, NJ 08817 732-572-0500

NJ LAWS LEGAL WEBSITE: www.njlaws.com
Criminal website www.BeNotGuilty.com

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