

The "New" New Jersey Probate Code

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For the first time in twenty-three (23) years, a major change has been made to the New Jersey Probate Code. The modifications to the New Jersey Probate Code are effective as of February 27, 2005. The revisions are consistent with the Uniform Probate Code which has been adopted in eighteen states. The new Probate Code substantially changes many provisions contained in the old Probate Code. A summary of some of the more important changes that have taken place are as follows:

1. Change In Intestacy Law - The intestacy law applies when a person dies without a Will. Under prior law, if a married man with children passed away without a Will, then the first \$50,000 of his assets would pass to his spouse. The remaining assets would be divided equally among his spouse and his children. Under the new Uniform Probate Code the spouse would receive all of his assets and the children would receive nothing. Furthermore, under prior law, if a married man died without a Will and had no children, then the first \$50,000 would pass to the spouse. The remaining amount would be divided equally among the spouse and the decedent's parents. Under the new law, the spouse would receive the first 25% of his assets (but not less than \$50,000 nor more than \$200,000) plus three-fourths of the balance. The remaining amount would pass to the parents of the decedent.
2. The Formal Requirements For A Holographic Will Have Been Modified - A holographic Will is a hand written Will. The new Probate Code does not specifically refer to a holographic Will, but instead refers to "a writing intended as a Will". Under the old Code formal requirements had to be met for a document to constitute a holographic Will. The new Code permits extrinsic evidence to be introduced to show the intent of the person who allegedly prepared the writing. For example, under the new Code, a Will prepared by a person on his computer and signed by him would appear to be valid. This document would not be a holographic Will because the material provisions of the document are not in his handwriting. However, if evidence could be shown to establish that it was the intent of the person to have the document constitute a Will then it may be recognized under the new Probate Code.

3. Notice To Bar Creditors Is No Longer Needed - Under the old Code an Executor would notify creditors of the estate by filing a Notice to Bar Creditors with the Surrogate's Office. From the date filed, a creditor of the estate would have six months to come forward and file a claim against the estate. After the six month period expired the Executor could distribute the funds of the estate without any liability to the creditor for failure to pay. Under the new Code it is no longer necessary to file a Notice to Bar Creditors. Instead, a creditor will have nine months after an individual's date of death to come forward and file a claim against an estate. If the creditor does not file a claim within nine months, then an Executor can distribute the funds of the estate to the beneficiaries without incurring any liability to the creditors.

In summary, the new Probate Code has substantially changed the rules that must be followed when a person dies. Although it might be easier to have a handwritten Will admitted to probate it is still a very risky proposition. If a Will is contested the legal fees incurred will far exceed the cost that would have been paid to have a Will prepared by a competent estate planning attorney. Furthermore, it is difficult for a lay person to address all possible contingencies that could occur. My recommendation is to seek out the advice of a competent estate planning attorney to determine whether any changes to your legal documents must be made because of the new Probate Code.