

SURROGATE'S COURT

Surrogate's Court is established in every county and hears cases involving the affairs of deceased persons, including the probate of wills and the administration of estates. The probate process involves a "proving" of the deceased's last Will, meaning it is the court's job to decide whether the Will was valid according to New York State law. If a will is declared valid then the estate will be disposed of according to the Will. If a deceased person dies intestate--that is without leaving a valid will--then the estate will be distributed in accordance with the law. The court will appoint an administrator, whose duties are similar to those of the executor who would have attended to the details of protecting the estate if the decedent had left a proper will.

In order to initiate a probate proceeding, it must first be determined whether the decedent left a Will. If a will has not been located, it might be helpful to check if the decedent filed it with their attorney or with the local Surrogate's Court. In order for any action to be taken on the Will, someone, usually the executor named under the Will, must ask the Surrogate's Court to approve the Will as the last Will of the deceased. If for some reason the named executor does not offer the Will for probate, any interested party, even a creditor of the deceased, may do so.

The next step would be to complete and submit the proper Petition to the court. If the decedent left a will, then a Petition for Probate must be filed. If the decedent died intestate, then a Petition for Letters of Administration is used. These, and all other necessary forms, are available from the court and on-line at www.nycourts.gov. Depending on the type of proceeding and what is involved, the court might require that certain documents be submitted with the petition, such as a death certificate and affidavits of attesting witnesses.

After proper notice has been given to heirs and interested parties and no one objects to the petition, and all required documents have been submitted to the court and are in order, the court will appoint the executor named in the Will (or the administrator named in the petition) to be the legal representative of the deceased's estate. Once formally appointed by the court, the executor or administrator will take legal title to all of the deceased's probate assets. These assets include all bank accounts, securities, and real estate individually owned by the decedent. The executor/administrator is the person responsible for all aspects of settling the estate, including paying debts and taxes, dealing with claims against the estate, and ultimately distributing the estate property to the beneficiaries.

If a person dies leaving personal property with a gross value of \$30,000 or less (\$20,000 or less prior to 1/1/09), a small estate proceeding (also referred to as a Voluntary Administration) may be commenced, regardless of whether or not the decedent left a Will. The decedent's property taken into account in this type of proceeding is personal property, bank accounts, stocks, insurance policies not payable to named beneficiaries, exempt property, etc. This article is not applicable to any real property in New York State owned by a decedent. However, the decedent's ownership of an interest in real property

shall not prevent the use of this type of proceeding in administering personal property. When a decedent dies without a Will, the right to act as Voluntary Administrator is granted first to the surviving adult spouse of the decedent. If there is none or if the spouse renounces, the right to act as Voluntary Administrator shall be a competent adult who, in the following order, is a: child or grandchild, parent, brother, sister, niece or nephew, aunt or uncle. If the decedent dies with a Will, the named Executor or alternate Executor shall have the first right to act as Voluntary Administrator.

In addition to probate and administration proceedings, Surrogate's Court also maintains jurisdiction over all actions and proceedings relating to the guardianship of the person and/or property of minors, mentally retarded, and developmentally disabled persons. Where an infant has no guardian, the court may appoint a guardian of his person or property, or of both, when the infant resides in the county or has property located within the county. A petition for the appointment of a guardian of the person or property, or both, of an infant may be made by any person on behalf of the infant, or if the infant is over the age of fourteen, it may be made by the infant. A petition for appointment as a guardian of the property of an infant may also be made by the public administrator of the county in which the infant resides when no one else is available to serve as guardian. Surrogate's Court and Family Court have concurrent jurisdiction of guardianship proceedings in certain circumstances.

A petition for the appointment of a guardian of the person or property, or both, of a mentally retarded or developmentally disabled person may be made by a parent, any interested person eighteen years of age or older on behalf of the mentally retarded or developmentally disabled person, including a corporation authorized to serve as a guardian, or by the developmentally disabled person when such person is eighteen years of age or older. When it shall appear to the satisfaction of the court that a person is a mentally retarded or developmentally disabled person, the court is authorized to appoint a guardian of the person or of the property or of both if such appointment of a guardian or guardians is in the best interest of the mentally retarded or developmentally disabled person.

Surrogate's Court and Supreme Court maintain concurrent jurisdiction of matters pertaining to conservatorships, which are proceedings for appointment of a guardian for personal needs or property management. The purpose of a conservatorship is to help those persons who require some form of assistance in meeting their personal and property management needs, taking into account their personal wishes, preferences, and desires. This arrangement affords the person the greatest amount of independence, self determination and participation in all the decisions affecting their life. Generally, this type of proceeding will come into Surrogate's Court if: 1) a person has an interest in money or property of an estate as a beneficiary or 2) a person is entitled to proceeds of any action as provided in Section 5-4.1 of EPTL or 3) a person is entitled to proceeds of a settlement of cause of action brought on behalf of an infant for personal injuries.

Surrogate's Court and Family Court maintain concurrent jurisdiction of adoption proceedings. An adoption is the legal proceeding whereby a person takes another person

into the relation of child and thereby acquires the rights and incurs the responsibilities of parent in respect of such other person. An adoption proceeding is either (1) an authorized agency adoption where the adoption is arranged by a social services agency for a child under eighteen years of age or (2) a private placement adoption where the adoption is arranged by private individuals and the adoptee may be any age. All adoption papers are strictly confidential. Adoption files are sealed and can only be opened pursuant to a court order.