

**New Jersey
N2K Hour:**

**Effects of
Death and
Estate Issues**

**Webex Presentation:
May 12, 2020**

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Types of Ownership in NJ

- Tenants in Common
- Joint Tenants with Right of Survivorship
- Tenants by the Entirety
- Life Estate
- Business Entities

Tenants in Common

- May involve any number of people
- They only share the unity of possession
- Their interests do not need to be equal in value, quality, or duration
- There are no rights of survivorship and upon death of a tenant in common ownership interest in a property passes to his/her estate
- A tenant in common may individually sell, devise, and encumber **only** their interest any way they choose and without the consent of co-tenant. May involve any number of people

Joint Tenancy

- Ownership of a single estate held by two or more people who hold title equally and jointly as though they collectively are one person
 - unities of possession, interest, time, and title must always be present
- Intent must be clear to create Joint Tenancy
 - Example: A and B, as joint tenants with the right of survivorship and not as tenants in common
- Interest of a deceased joint tenant passes upon death to the surviving joint tenant(s) by operation of law – no probate necessary!
- No right to dower or curtesy with Joint Tenancy

Tenants by the Entirety

- Reserved only for property held by married couple or civil union partners
- Requires all four unities of title: interest, title, time, and possession – and unity of person (valid marriage or civil union partnership)
- In New Jersey, a conveyance or devise to a married couple or civil union partners is presumed to create a Tenancy by the Entirety (TBE), unless specific wording contradicts the presumption
- Parties must be married/in civil partnership at the time of taking title!

Tenancy by the Entirety

- Federal tax lien against one spouse attaches to the delinquent taxpayer/spouse's interest in the property and can be enforced by non-judicial sale of the property or by judicial foreclosure
- Federal tax liens are extinguished upon the death of the delinquent taxpayer/spouse and do not transfer to the surviving spouse
- Tenancy by the entirety may be terminated by: death, divorce, mutual agreement, joint conveyance from both spouses into one spouse

Liens and other Ownership Issues

- If property is owned as tenants in common, a judgment against fewer than all co-owners will only constitute a lien on the interest of the debtor.
- If property is owned as joint tenants or tenants by the entirety and debtor pre-deceases the other co-tenants, lien of judgment is extinguished against the property.

Life Estates

- Created by conveyance or devise for either the benefitting party's life or the life of another.
- Holder of a Life Estate must sign off on all conveyances or encumbrances (deeds, mortgages, etc.)
- Obtain a death certificate to clear title
- Lien against holder of a Life Estate is extinguished against property upon death.
 - Judgment holder can only execute against the Life Estate, not the remainder interest.

Entity Ownership

- Title is held by the entity, not an individual.
- However, for trusts, the conveyance must be into an individual as Trustee for the Trust (John Smith, as Trustee of the Smith Family Trust).
- In general, liens against individuals do not attach to property owned by an entity.
 - Watch out for revocable trusts!
- The entity documents (operating agreements, by-laws, trusts, etc.) govern how the entity is managed.

Entity Ownership

- What happens if a member of a LLC dies?
- Pursuant to N.J.S.A 42:2C-44: If a member dies, the deceased member's personal representative or other legal representative may exercise the rights of a transferee.
- The Estate does not become a participating member of the LLC, unless there is unanimous consent of all surviving members (N.J.S.A. 42:2C-31(c)(3))
- Remember! The Operating Agreement can include provisions regarding the death of a member.

Testate Procedures

- Probate of Will
- Appointment of Executor
- Appointment of Administrator c.t.a. (*cum testamento annexo*)
- Marshalling of assets/Payment of estate debts
- Payment of NJ Inheritance Tax , NJ Estate Tax, and/or Federal Estate Tax, if applicable and Obtain ITW
- Sale of assets
- Distribution of estate assets to devisees
- Final accounting of estate

Intestate Procedures

- Administration of estate
- Appointment of Administrator
- Marshalling of assets/Payment of estate debts
- Payment of NJ Inheritance Tax, NJ Estate Tax and/or Federal Estate Tax) and Obtain ITW
- Sale of assets
- Distribution of estate assets to heirs at law
- Final accounting of estate

Devolution Of Property Upon Death

N.J.S.A. 3B:1-3 provides that real and personal property **passes upon the death of a person** (the decedent), to the persons to whom the property is devised by will or, in the absence of a will, to the decedent's heirs at law.

- If property passes by will, it may be by specific devise or residuary devise.
- A deed from the Estate to the heir/devisee is required!

What about the intentional death of decedent?

- Under N.J.S.A. 3B:7-1.1, an individual responsible for the intentional killing of the decedent forfeits all interest in the decedent's estate.
- Revokes any right the killer OR their relative may have had under any governing instrument executed by decedent including trusts, POAs, etc.
- Severs any joint tenancies or tenancies by the entirety and converts the interest to tenants in common

Disclaimer (N.J.S.A 3B:9-1, et seq.)

- A person who is an heir, devisee, or beneficiary of an estate may disclaim in whole or in part any property or interest therein by filing a disclaimer (N.J.S.A. 3B:9-2)
- A surviving joint tenant may also disclaim an interest to any property devolving to them by right to survivorship.
- Disclaimer must be in writing, signed, and acknowledged by person disclaiming and describe the property being disclaimed (N.J.S.A 3B:9-3)
- Disclaimer may be barred under N.J.S.A 3B:9-9

Conveying Title from the Estate

- What do we need to convey title?
 - A Surrogate Search will confirm if an executor/administrator has been appointed and include a copy of the will.
 - Completed Estate Questionnaire
 - Estate debts identified and/or paid.
 - Confirmation that all Federal Estate, Inheritance and NJ Estate taxes have been paid, if applicable.

- The Fiduciary Power Act, N.J.S.A. 3B:14-23 gives executors and administrators the power to convey real property without the need for court order.
 - If decedent dies intestate, we will accept an administrator's deed without requiring the heirs to join in the conveyance.
 - If a decedent dies leaving a will and the devise is a general devise, we will accept a deed from the executor without requiring the devisees to join in the conveyance.
 - If the decedent dies leaving a will and the devise is specific, we will ask that the deed be executed by the executor and the specific devisees.

Testamentary Trusts

- A testator may devise property to a testamentary trust created by the terms of his own will.
- The will itself establishes the trust and sets the boundaries of the trustee's authority.
- The creation of any testamentary trust is dependent upon:
 - The death of the testator
 - Probate of the will.
- An intervivos or living trust may be the devisee under a will.
- If property is placed in testamentary trust, the Trustee must join the Executor in signing the deed.

What about the proceeds?

- It is the responsibility of the estate to pay off debts and distribute funds to beneficiaries.
- Generally speaking, sale proceeds of estate property should be sent to the executor on behalf of the estate (not individually) or the attorney representing the estate.
- Exceptions to the general rule:
 - Court orders

Issues with the Heirs?

- Missing Estate or Heir Information – What to consider?
 - Why are they missing?
 - Passage of time
 - Current owner title policy?
 - Heirship affidavits
 - When in doubt – talk with your underwriter!

Red Flags for Estate Transactions

- Is Executor complying with the terms of the will?
 - If not, have all heirs/devisees agreed to the transaction?
- Is Executor acting in the best interest of the estate?
 - For example: Selling property for fair market value?
 - Watch out for self-dealing transactions!
- Judgments against Decedent
 - Tenancy in Common: Judgments do not die with decedent
- Judgments against Heir or Devisees
 - Residuary beneficiary: No | Specific Devise: Yes

What about Taxes?

- There are 3 types of taxes related to estates in New Jersey:
 - Federal Estate Tax
 - New Jersey Inheritance Tax
 - New Jersey Estate Tax
- A surviving spouse is not subject to all three taxes upon the death of the decedent spouse.

Federal Estate Taxes

- Federal Estate Taxes are a lien against real property for 10 years from the date of death.
- Obtain proof that any Federal Estate Taxes due are paid prior to closing
- If closing is to occur prior to receipt of proof of payment, an escrow must be held and Indemnity Bond completed by seller
- Federal Estate Tax is due depending upon the value of the estate at the date of death.

Federal Estate Taxes

- Federal Estate Tax Exemption has been over \$5 million per individual since 2011:
 - 2017: \$5,490,000
 - 2018: \$11,180,000
 - 2019: \$11,400,000
 - 2020: \$11,580,000
- Typically, a majority of estates are not going to be subject to Federal Estate Taxes

New Jersey Inheritance Tax

- NJ Inheritance Tax is a lien for 15 years from the date of death
- Upon full payment of the tax, the Department of Taxation will issue an Inheritance Tax Waiver (ITW) which is to be filed in the county in which the real property is located.
- If the estate is taxable, an ITW must be obtained for the property in question prior to closing.
- If closing is to occur prior to receipt and filing of Inheritance Tax Waiver, an escrow must be held and Indemnity Bond completed by seller.

New Jersey Inheritance Tax

- NJ Inheritance Tax is based upon the amount inheritance received by a devisee or heir at law.
- We do not require an Inheritance Tax Waiver if all beneficiaries are Class A beneficiaries
- All other beneficiaries, except “non-profits” are subject to NJ Inheritance tax after calculation of a threshold exemption
- The Estate Questionnaire is very helpful to determine beneficiary classes.

New Jersey Inheritance Tax

- **Class A:** Father, mother, grandparent, grandchild, spouse, domestic partner, civil union partner, child, stepchild, legally adopted child, issue of a child or legally adopted child, any mutually acknowledged child, and non-biological child conceived by artificial insemination during a civil union or domestic partnership (unless it is proven that non-biological parent did not intend to be child's parent)
 - Fully Exempt from Inheritance Tax

New Jersey Inheritance Tax

- **Class C:** Brother, sister (including half-brother/sister), son-in-law, daughter-in-law (surviving deceased child):
 - First \$25,000.00 – Fully exempt
 - \$25,000 up to \$1.1 million – 11%
 - \$1.1 million up to \$1.4 million – 13%
 - \$1.4 million up to \$1.7 million – 14%
 - \$1.7 million and over – 16%

New Jersey Inheritance Tax

- **Class D:** Any transferee who isn't Class A, C, or E
 - Under \$500 – Fully Exempt
 - Any amount up to \$700,000 – 15%
 - Any amount in excess of \$700,000 – 16%
- **Class E:** State of NJ, educational institutions, churches, hospitals, etc. (Most charitable conveyances)
 - Fully Exempt

New Jersey Estate Tax

- Effective for estates where decedent dies after 12/31/01
- Tax must be paid within 9 months plus 30 days of date of death.
- For estates in excess of \$675,000 (DOD Prior to 1/1/2017) or \$2,000,000 (DOD 1/1/2017 to 12/31/2017), must have:
 - Proof of payment of New Jersey Estate Taxes
 - Estate Tax Waiver from Division of Taxation to be recorded – If not recorded, you must hold an escrow
- Keep in mind: Amount paid in Inheritance tax acts as a credit towards Estate Tax

New Jersey Estate Tax

- Estates in excess of \$675,000 and where the decedent died from 12/31/01 up to 12/31/16, the calculation of Estate Tax is based this worksheet.
- A \$60,000 exemption amount is allowed
- Use amount in Line 3 with the worksheet to determine amount

Worksheet For New Jersey Estate Tax

1. Taxable Value	1.	
2. Exemption Amount	2.	\$60,000.00
3. Line 1 minus Line 2	3.	
(Use amount from Line 3* to calculate tax in Tax Table below)		

* NOTE: For the Form 706 Method (Column B) calculations, if Line 3 is less than \$727,174, Adjusted Taxable Gifts will have an impact on the calculation of the tax.

TAX TABLE					
USE AMOUNT FROM LINE 3 ABOVE					
AT LEAST	BUT LESS THAN	TAX ON AMOUNT IN FIRST COLUMN	+	%	OF EXCESS OVER
\$ 0	\$ 615,000	\$ 0		0	\$ 0
615,000	667,175	0		37.0	615,000
667,175	840,000	19,304		4.8	667,175
840,000	1,040,000	27,800		5.6	840,000
1,040,000	1,540,000	38,800		6.4	1,040,000
1,540,000	2,040,000	70,800		7.2	1,540,000
2,040,000	2,540,000	106,800		8.0	2,040,000
2,540,000	3,040,000	146,800		8.8	2,540,000
3,040,000	3,540,000	190,800		9.6	3,040,000
3,540,000	4,040,000	238,800		10.4	3,540,000
4,040,000	5,040,000	290,800		11.2	4,040,000
5,040,000	6,040,000	402,800		12.0	5,040,000
6,040,000	7,040,000	522,800		12.8	6,040,000
7,040,000	8,040,000	650,800		13.6	7,040,000
8,040,000	9,040,000	786,800		14.4	8,040,000
9,040,000	10,040,000	930,800		15.2	9,040,000
10,040,000	-----	1,082,800		16.0	10,040,000

New Jersey Estate Tax

- For example: Let's say we have a \$1 million estate:

1. Line 1: \$1,000,000.00 subtracted by \$60,000.00 (Line 2)

2. Line 3: 940,000.00

3. $940,000 - 840,000 = 100,000$

4. $100,000 \times 5.6\% = 5600$

5. $5600 + 27,600 = \$33,200.00$

Worksheet For New Jersey Estate Tax

1. Taxable Value	1.	
2. Exemption Amount	2.	\$60,000.00
3. Line 1 minus Line 2 (Use amount from Line 3* to calculate tax in Tax Table below)	3.	

* NOTE: For the Form 706 Method (Column B) calculations, if Line 3 is less than \$727,174, Adjusted Taxable Gifts will have an impact on the calculation of the tax.

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615,000	667,175	0		37.0	615,000
667,175	840,000	19,304		4.8	667,175
840,000	1,040,000	27,600		5.6	840,000
1,040,000	1,540,000	38,800		6.4	1,040,000
1,540,000	2,040,000	70,800		7.2	1,540,000
2,040,000	2,540,000	106,800		8.0	2,040,000
2,540,000	3,040,000	146,800		8.8	2,540,000
3,040,000	3,540,000	190,800		9.6	3,040,000
3,540,000	4,040,000	238,800		10.4	3,540,000
4,040,000	5,040,000	290,800		11.2	4,040,000
5,040,000	6,040,000	402,800		12.0	5,040,000
6,040,000	7,040,000	522,800		12.8	6,040,000
7,040,000	8,040,000	650,800		13.6	7,040,000
8,040,000	9,040,000	786,800		14.4	8,040,000
9,040,000	10,040,000	930,800		15.2	9,040,000
10,040,000	-----	1,082,800		16.0	10,040,000

New Jersey Estate Tax

- For estates where the decedent died on or after 1/1/2017 but before 12/31/2017, the state has provided a calculator to do the math.

NEW JERSEY 2017 ESTATE TAX CALCULATOR

To be used only for estates with a date of death on or after January 1, 2017, but before January 1, 2018.

New Jersey Taxable Estate

ENTER amount from line 3c of 2017 Estate Tax return =====> \$ 2,920,000.00

(If estimating tax, enter the estimated net estate)

2017 Tentative NJ Estate Tax

Enter this amount on Line 4 of the 2017 Estate Tax return: \$ 69,264.71

NOTE: You may use this calculator to generate an estimated tax if you are not yet ready to file a return.

For decedents who died on or after January 1, 2018, there is No NJ Estate Tax!

Inheritance and Estate Tax Escrow

- What if the estate hasn't paid the taxes or hasn't received the ITW?
- If the estate can provide proof that the correct payment was made to the Division of Taxation, no escrow is required.
 - Confirm that the amount sent is the correct amount owed!
- If the estate has not sent in the payment, an escrow based on the gross value of the estate can be held.
- Funds from this escrow can be used for payment by the estate.

Helpful Links

- Div. of Taxation: Inheritance & Estate Tax Branch
 - <http://www.state.nj.us/treasury/taxation/inheritance-estate/inheritance.shtml>
 - Provides overviews, instructions, forms, rates, filing requirements, contact information, tax calculator, etc.
- <http://www.stewart.com/new-jersey>
 - Includes links to our most requested forms, schedule of upcoming events, past seminar materials, and more!

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