

Ancillary Probate in New Jersey

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A Practice Note summarizing the laws and procedures of New Jersey governing ancillary administration, ancillary probate, and the appointment of a local fiduciary in New Jersey to administer the property of a deceased foreign domiciliary. This Note reviews the authority of a foreign fiduciary to administer property located in New Jersey, when a local fiduciary may be appointed in New Jersey, the procedural rules governing fiduciary appointment, and the fiduciary's authority, duties, and obligations.

Estate planning, estate and trust administration, and estate and trust taxation filing deadlines may be impacted by emergency measures enacted in response to the 2019 novel coronavirus disease (COVID-19). For current updates on certain state and local laws and procedures impacted by COVID-19, including electronic signature, notarization, and witnessing laws and emergency orders, court closures, deadline extensions, and updated procedures, tax extensions, and general emergency estate planning guidance, see [Private Client Global Coronavirus Toolkit](#).

A decedent domiciled outside New Jersey (a nonresident decedent) may die leaving property in New Jersey that does not pass by title or operation of law. In that case, the appointment of a personal representative in New Jersey or another New Jersey administration process may be necessary to administer or dispose the nonresident decedent's New Jersey property.

This appointment and administration process is called ancillary probate or ancillary administration (sometimes both generally referred to as ancillary estate administration). New Jersey law governs ancillary estate administration proceedings, which may generally be pursued after estate administration is first opened (pursued) in the jurisdiction of domicile.

It is important for counsel to understand the options available when a nonresident of New Jersey dies leaving assets subject to estate administration in New Jersey. This Note presents an overview of the New Jersey ancillary estate administration process and its alternatives.

Overview of Estate Proceedings in New Jersey

The primary types of New Jersey estate proceedings are:

- **Probate.** The process sought when a decedent dies testate (with a will). In a probate proceeding, the Surrogate's Court (or sometimes the Superior Court of New Jersey) must accept the decedent's will as valid. If in the testator's will, the testator nominated a fiduciary to administer the testator's estate, the court generally appoints that fiduciary as executor of the will, issuing letters testamentary authorizing the executor to administer the estate. In New Jersey, a will can typically be admitted to probate by an *ex parte* application. (N.J.S.A. 3B:3-19.)
- **General administration.** The process sought when a decedent dies intestate (without a will). The court appoints an administrator of the decedent's estate, issuing letters of administration that authorize the administrator to administer the estate. There is a



statutory order of priority that governs which parties may be issued letters of administration. (N.J.S.A. 3B:10-1 and 3B:10-2.)

- **Administration CTA.** Also called administration *cum testamento annexo* or administration with the will annexed, this process applies where a decedent dies testate (with a will), but either the testator failed to nominate an executor under the terms of the testator's will, the nominated executor renounced appointment, died, or otherwise failed to qualify or serve as executor. In that case, the court may appoint an Administrator CTA to administer the decedent's will. (N.J.S.A. 3B:3-17 and 3B:10-16.)
- **Limited administration.** This process may be pursued so a fiduciary can fulfill a limited role. Those roles include:
 - **administration *ad prosequendum*.** This process involves the appointment of a limited administrator with the sole authority to pursue a lawsuit for the decedent or the decedent's estate;
 - **temporary administration or administration *pendente lite*.** This process involves the temporary appointment, often because of pending litigation, of a limited administrator granted limited specified powers and serves until a general personal representative is appointed; and
 - **administration *ad litem*.** This process involves the appointment of a limited administrator to provide a necessary party to an action where the decedent or the decedent's estate was a necessary party. (N.J.S.A. 3B:10-1 to 3B:10-12 and N.J. R. 4:82.)
- **Small estate administration.** This process may be pursued when the decedent dies intestate and the estate holds minimal assets. A spouse, civil union partner, or domestic partner (if the assets do not exceed \$50,000) or an heir (if the assets do not exceed \$20,000) can qualify to transfer and distribute the estate assets by simply filing an affidavit confirming the value of those assets with the Surrogate's Court. (N.J.S.A. 3B:10-3, 3B:10-4, and see Small Estate Affidavit).

As used in this Note, personal representative refers to fiduciaries appointed by the court to administer a decedent's estate, including executors and administrators.

For more information on these estate proceedings and processes in local New Jersey estate administrations, see [Practice Note, Understanding Probate in New Jersey: Types of Estate Proceedings](#).

Overview of Ancillary Estate Administration

The purpose of ancillary probate or administration in New Jersey is the appointment of a personal representative to administer a nonresident decedent's assets located in New Jersey or perform other administration tasks relating to New Jersey property for the benefit of the nonresident decedent's estate.

A nonresident decedent is a decedent not domiciled in New Jersey at the decedent's death (N.J.S.A. 3B:1-2). An individual's domicile is that individual's true, fixed, permanent home and principal establishment to which the individual intended to return whenever absent and from which the individual had no present intent of moving (*Cromwell v. Neeld*, 15 N.J. Super. 296, 300 (App. Div. 1951)).

If probate or administration:

- Was granted in a nonresident decedent's jurisdiction of domicile, probate or administration in New Jersey may be required so New Jersey assets can be administered (an ancillary probate or ancillary administration as the case may be).
- Was not granted in the decedent's jurisdiction of domicile, the decedent must seek original probate or administration in New Jersey despite where the decedent was domiciled at death.

Ancillary probate or administration in New Jersey is subordinate to probate or administration granted in the jurisdiction of domicile. (*Pisano v. B.M. & J.F. Shanley Co.*, 66 N.J.L. 1, 6-7 (1901).)

In New Jersey:

- Estate administrations (whether original or ancillary) undertaken by personal representatives appointed in New Jersey are called local administrations (N.J.S.A. 3B:1-2).
- A domiciliary foreign fiduciary is any fiduciary appointed or authorized to act as fiduciary in the jurisdiction where the decedent was domiciled at death (N.J.S.A. 3B:1-1). If necessary, a domiciliary foreign fiduciary may seek appointment as a local fiduciary in New Jersey in a New Jersey ancillary estate administration.
- A local fiduciary is a personal representative issued original or ancillary letters in New Jersey (N.J.S.A. 3B:1-2). A domiciliary foreign fiduciary may become a local fiduciary, but only if issued ancillary letters in New Jersey (N.J.S.A. 3B:1-2).

Where a nonresident decedent left property in New Jersey, probate or the appointment of a local fiduciary in New Jersey may be unnecessary because the domiciliary foreign fiduciary may have authority to administer and dispose of that New Jersey property if certain procedures are carried out (see [Alternatives to Ancillary Probate or Administration](#)). In these circumstances, the domiciliary foreign fiduciary may act in New Jersey, but is not considered a local fiduciary (N.J.S.A. 3B:1-1; 3B:1-2).

Jurisdiction and Venue of Local and Ancillary Estate Proceedings

In New Jersey, the Surrogate's Courts and the Superior Court of New Jersey have jurisdiction to probate wills and appoint personal representatives to administer estates (N.J.S.A. 3B:2-1 to 3B:2-6) and see [Practice Note, Understanding Probate in New Jersey, Jurisdiction Over Estate Proceedings](#)). However, estate administrations need only be pursued in the Superior Court when:

- A caveat was filed in the Surrogate's Court before entry of its judgment. (A caveat is a written objection to probate of a will that precludes probate of the will without judgment of the Superior Court.)
- Doubt arises on the face of a will or a will was lost or destroyed.
- An application is made to admit to probate a writing that does not satisfy the statutory requirements for a will, but was intended as a will as addressed under N.J.S.A. 3B:3-3. For more information about the statutory requirements for a will, see [Ancillary Probate of a Nonresident Decedent's Valid Will](#).
- An application is made to appoint an administrator *pendent lite* or other limited administrator.
- A dispute arises before the Surrogate's Court regarding any matter.
- The Surrogate's Court certifies the case to be of doubt or difficulty.

(N.J. R. 4:82 and 4:84-1.)

Estate administrations may be pursued in the Surrogate's Court or Superior Court in the county where the decedent's New Jersey real or personal property is located. For jurisdictional purposes, New Jersey personal property includes:

- Personal property where there is evidence of the property being held in the hands of a New Jersey resident.
- A chose of action (a claim).

(N.J.S.A. 1:1-2 and 3B:10-7.)

If a dispute arises over whether a decedent owned property in New Jersey, the Superior Court holds jurisdiction to adjudicate that dispute (*In re Estate of Byung-Tae Oh*, 445 N.J. Super. 402 (App. Div. 2016) and *In re Gardinier's Estate*, 40 N.J. 261, 265-268 (1963)).

Statutes and Rules Governing Ancillary Estate Proceedings

Unless otherwise specified in this Note, the rules and processes applicable in local New Jersey estate administrations and processes generally apply for New Jersey ancillary estate administrations and processes. Specifically, Title 3B of the New Jersey Statutes Annotated sets out laws and procedures governing estate administrations, wills, and intestacy (N.J.S.A. 3B:1-1 to 3B:31-84). Practitioners should also consult the New Jersey Rules of Court applicable to the Surrogate's Court and matters before the Probate Part of the Superior Court of New Jersey (N.J. R. 4:80-1 to 4:96-5).

When Ancillary Probate or Administration is Not Required

The appointment of a local fiduciary in New Jersey is not always required to administer New Jersey property of a nonresident decedent. More specifically, a local fiduciary is generally not required to be appointed when a nonresident decedent's New Jersey property:

- Passes by title, operation of law, or beneficiary designation.
- Was transferred to a trust before the decedent's death. The trustee of that trust administers trust property. For more information on revocable trusts, see [Practice Note, Understanding Revocable Trusts \(NJ\)](#).
- Meets criteria for an alternative procedure that can be pursued in lieu of appointment of a local fiduciary in New Jersey (see [Alternatives to Ancillary Probate or Administration](#)).

In most cases, the issuance of letters in New Jersey and the appointment of a local fiduciary is generally not required because simpler alternative procedures are

typically available. However, in these cases, one may still want appointment of a local fiduciary. (See Alternatives to Ancillary Probate or Administration.)

Initiating an Ancillary Probate or Administration

Nonresident Testate Decedents

If a nonresident decedent dies testate (with a valid will), an interested person can file for either:

- Ancillary probate of the nonresident decedent's will if it was probated in another jurisdiction (see Ancillary Probate of a Nonresident Decedent's Valid Will).
- Original probate if the will was not admitted to probate in the state of the nonresident decedent's domicile (see Original Probate).

Alternatively, where an interested person wants only to convey or prove title to New Jersey real property, probate in New Jersey may be avoided if there is a domiciliary foreign fiduciary and any interested person records, in the Surrogate's Court in any county in which the nonresident decedent's real property is located, an authenticated copy of:

- The will probated by the domiciliary foreign court.
- The letters testamentary issued by the domiciliary foreign court with any bond.

Using this recording process, a domiciliary foreign fiduciary is authorized to dispose of the decedent's New Jersey real property. (N.J.S.A. 3B:3-27 and see Recording Will of Nonresident Decedent to Administer Real Property.)

Ancillary Probate of a Nonresident Decedent's Valid Will

When a nonresident dies testate with a will admitted to probate in another state or foreign jurisdiction, the Surrogate's Court of any county in New Jersey may:

- Admit the will to probate for any purpose.
- Issue letters in New Jersey to the executor named in the will (generally the domiciliary foreign fiduciary) if the will is valid in New Jersey.

(N.J.S.A. 3B:3-26.)

A will is valid in New Jersey if it is executed in compliance with either:

- New Jersey's statutory execution requirements (N.J.S.A. 3B:3-2, 3B:3-3, and see [Practice Note, Understanding Wills \(NJ\): Procedures for Executing a Valid Will](#)); or

- The law of either:
 - the state or country where the will was executed; or
 - the state or country where the decedent was domiciled, had a place of abode, or was a national at the time of the will's execution or the decedent's death.

(N.J.S.A. 3B:3-9.)

For ancillary probate, the Surrogate's Court generally requires the production of exemplified copies of both:

- The nonresident decedent's will.
- The foreign probate record (any judgment admitting the will to probate, letters testamentary, or any other records issued regarding the foreign probate).

(28 U.S.C.A. § 1738.)

Once the required documents are submitted, the procedure is similar to probate of the will a resident decedent. The Surrogate enters a probate judgment and issues letters to an executor or administrator with the will annexed, if the nominated fiduciary qualifies. For more information regarding the admission of a will to probate and the probate process for New Jersey resident testate decedents, see [Practice Note, Understanding Probate in New Jersey](#).

Original Probate

If a nonresident of New Jersey dies testate, leaving property in New Jersey, but the nonresident decedent's will is not probated in the decedent's home state or country, the decedent's will can be admitted for original probate in New Jersey. The Surrogate's Court or Superior Court in any county in which the decedent left property may admit the will to probate and issue letters testamentary or letters of administration CTA to a fiduciary to administer the New Jersey property. (N.J.S.A. 3B:3-28.)

Nonresident Intestate Decedents

If a nonresident decedent dies intestate (without a valid will), an interested person can apply before the Surrogate's Court or the Superior Court in any county in which the decedent left property for either:

- Ancillary administration, if an administrator was appointed in the jurisdiction of the decedent's domicile (see Ancillary Administration in Intestacy).
- Original administration, if no administrator was appointed in the jurisdiction of the decedent's domicile (see Original Administration in Intestacy).

The personal representative in an ancillary or original administration is appointed based on the order of priority set by statute (see [Appointing an Ancillary Personal Representative](#)).

Ancillary Administration in Intestacy

If a nonresident decedent dies intestate with New Jersey property and an administrator was appointed in the decedent's jurisdiction of domicile, the Surrogate's Court of the county where the New Jersey property is located or the Superior Court may issue ancillary letters of administration:

- To a person appointed domiciliary foreign fiduciary.
- On notice to the domiciliary foreign fiduciary, to any person entitled to letters of administration if the decedent had been a New Jersey resident at death.

(N.J.S.A. 3B:10-7 and see [Priority to Serve as Administrator](#).)

The person applying for appointment as administrator must present the appropriate court with satisfactory proof of intestacy (N.J.S.A. 3B:10-7).

Original Administration in Intestacy

The court may generally grant letters of administration for a nonresident intestate decedent's estate even if no letters were granted by a court in the decedent's domicile (N.J. R. 4:80-1(a) and *In re Post*, 89 N.J. Eq. 526, 527 (Prerog. 1918)).

However, counsel should be aware that, as a matter of practice, a few Surrogate's Courts may require the appointment of a domiciliary foreign administrator and that notice be given to that administrator before they appoint an administrator in New Jersey.

Appointing an Ancillary Personal Representative

In an ancillary estate administration, if the personal representative (fiduciary) is:

- Named in the nonresident decedent's will, the personal representative is referred to more specifically as the executor (see [Priority to Serve as Executor](#)).
- Not named in the nonresident decedent's will, the personal representative is referred to more specifically as the administrator (see [Priority to Serve as Administrator](#)).

In some cases, a creditor may be appointed as local personal representative if no other eligible person applies (see [Appointment of a Creditor as Local Fiduciary](#)).

Once an ancillary fiduciary is appointed, the fiduciary may act only regarding the New Jersey assets and must comply with the fiduciary duties that apply to all New Jersey personal representatives (see [Authorities and Duties of Local \(Ancillary\) Fiduciary](#)).

Priority to Serve as Executor

For testate estates, the executor named in the decedent's will generally has priority to serve as executor in an ancillary probate. This named executor is generally the domiciliary foreign fiduciary. As in an original probate, the executor must duly qualify before the Surrogate's Court and seek the issuance of letters testamentary (N.J. R. 4:96-1 and see [Practice Note, Understanding Probate in New Jersey: Qualification of Fiduciaries](#)).

Priority to Serve as Administrator

For intestate estates, the domiciliary foreign fiduciary is generally appointed ancillary administrator in New Jersey. If, however, the domiciliary foreign fiduciary does not seek appointment as ancillary administrator, the order of priority of persons able to apply for ancillary letters of administration is:

- The decedent's surviving spouse or domestic partner.
- The remaining living heirs of the decedent or some of them if they or any of them intend to accept appointment.
- If the decedent leaves no heirs or the heirs do not apply for their appointment within 40 days after the decedent's death, to any fit person accepting appointment.

(N.J.S.A. 3B:10-2.)

Appointment of a Creditor as Local Fiduciary

If a nonresident decedent dies leaving real or personal property in New Jersey or there is evidence that the nonresident's personal property is held by a New Jersey resident and no one applies to be appointed local fiduciary for 60 days after the decedent's death, a bona fide creditor of the decedent can apply for appointment as local fiduciary (N.J.S.A. 3B:10-8).

For the creditor to apply for appointment as local fiduciary, either:

- The nonresident decedent must owe a debt to the creditor.

- The creditor must possess a legal claim against the decedent which survives against the decedent's representatives.

(N.J.S.A. 3B:10-8.)

The creditor need not be a New Jersey resident, but must be a fit person. Before the creditor can be appointed, the creditor must give notice of the creditor's application for appointment to the domiciliary foreign fiduciary, if any.

(N.J.S.A. 3B:10-8.)

Authorities and Duties of Local (Ancillary) Fiduciary

A local (ancillary) fiduciary, once appointed and authorized to act in New Jersey, does not gain authority to administer all the nonresident decedent's assets, wherever located. Rather, the local fiduciary has authority only regarding the decedent's New Jersey assets (*In re Estate of Yung-Ching Wang*, 2011 WL 2981478, *4-5 (N.J. App. Div. 2011) and *In re Estate of Healey*, 4 N.J. Misc. 785, 786-87 (Orph. Ct. 1926)).

The Surrogate's Court does not issue letters labeled ancillary or that otherwise reflect this limitation. This limitation is instead determined by reference to the nonresident decedent's domicile on the letters.

The local fiduciary, like all personal representatives appointed in New Jersey, owes fiduciary obligations to the beneficiaries of the estate as well as to the nonresident decedent's creditors (N.J.S.A. 3B:10-7, 3B:10-19 to 3B:10-32). These duties include the duties of good faith, loyalty, due care, and disclosure (*In re Carter's Estate*, 6 N.J. 426 (1951); *Liberty Title and Tr. Co. v. Plews*, 6 N.J. 28 (1950)). For more information on fiduciary duties and grounds for removal in New Jersey, see [Practice Note, Understanding Probate in New Jersey: Removal of Fiduciary](#).

Ancillary Administration and Probate Process

Once New Jersey appoints a local fiduciary to act regarding a nonresident decedent's New Jersey property, the ancillary probate and administration process is similar to the original probate and administration process in New Jersey. The personal representative must generally:

- Collect the nonresident decedent's New Jersey real and personal property (see [Practice Note, Understanding Probate in New Jersey: Marshalling Assets](#)).

- Apply the New Jersey property toward payment of the nonresident decedent's debts and expenses (N.J.S.A. 3B:22-19 to 3B:22-21 and see [Creditor Claims](#)).
- Distribute the nonresident decedent's remaining New Jersey property to the domiciliary foreign fiduciary if there is a domiciliary foreign fiduciary and, if not, as otherwise provided under law (generally to the beneficiaries) (N.J.S.A. 3B:23-42 and see [Final Distributions](#)).

For more information on the original probate and administration process in New Jersey, see [Practice Note, Understanding Probate in New Jersey: Administration of the Estate](#).

Creditor Claims

The creditor claims process in an ancillary estate administration is generally similar to that process in the estate administration of a New Jersey decedent's estate. All assets of estates administered in New Jersey, including ancillary estates, are generally subject to all claims and charges existing or established against the personal representative wherever appointed (N.J.S.A. 3B:22-19).

If a nonresident decedent's New Jersey assets or the nonresident decedent's estate assets overall, are insufficient to pay creditor claims, each creditor with a claim allowed in New Jersey or in another jurisdiction receives a proportionate payment from the New Jersey assets (N.J.S.A. 3B:22-20).

If the overall estate of a nonresident decedent is insolvent, the claims specifically allowed in New Jersey are paid proportionately from the New Jersey property. Any remaining New Jersey property is paid to the domiciliary foreign fiduciary. However, if the property in New Jersey is insufficient to pay the claims allowed in New Jersey, those claims are paid proportionately from the New Jersey property after taking into account all dividends on claims allowed in New Jersey from assets in other jurisdictions. (N.J.S.A. 3B:22-21.)

For more information on the creditor claims process in New Jersey, see [Practice Note, Understanding Probate in New Jersey: Creditors' Claims](#).

Final Distributions

The conclusion of an ancillary estate administration, including final distributions and closing the estate, is generally similar to the administration of a New Jersey decedent's estate (see [Practice Note, Understanding Probate in New Jersey: Final Settlement of the Estate](#)).

If a court in the nonresident decedent's domicile appointed a domiciliary foreign fiduciary, the local fiduciary must ultimately distribute the New Jersey assets collected by the local fiduciary, after satisfying the decedent's debts and obligations, to the domiciliary foreign fiduciary (often, the domiciliary foreign fiduciary and the ancillary fiduciary are the same individual) for distribution to the decedent's successors (N.J.S.A. 3B:23-42). However, the local fiduciary can make distributions directly, if either:

- Under the decedent's will, if any, and applicable choice of law rules, the successors are identified under New Jersey law without reference to the local law of the decedent's domicile (N.J.S.A. 3B:23-42(a)).
- The local fiduciary appointed in New Jersey, after reasonable inquiry, is unaware of the existence or identity of a domiciliary foreign fiduciary (N.J.S.A. 3B:23-42(b)).

The domiciliary foreign fiduciary or, if one of the above exceptions applies, the local fiduciary distributes the assets to the nonresident decedent's successors under either:

- The decedent's valid will, if the decedent died testate.
- The intestacy laws of the decedent's state of domicile, if the decedent died intestate.

(N.J.S.A. 3B:23-42 and *Estate of Baumiester ex rel. Bodnar v. Cavanaugh*, 2011 WL 1642322, *3 (App. Div. 2011).)

Alternatives to Ancillary Probate or Administration

In some circumstances, the appointment of a local fiduciary in New Jersey may be unnecessary and alternative procedures and processes can be used to administer the nonresident decedent's New Jersey assets when:

- The nonresident decedent's state of domicile admitted the nonresident decedent's will to probate. Recording of the nonresident decedent's will can enable a devisee or a domiciliary foreign fiduciary (on recording of also the representative's letters and bond, if any) the decedent's New Jersey real property to be transferred to the beneficiaries without the appointment of a local fiduciary in New Jersey (see Recording Will of Nonresident Decedent to Administer Real Property). This procedure is not available to transfer a nonresident decedent's New Jersey real property when the decedent died intestate.
- The nonresident decedent's state of domicile appointed a domiciliary foreign fiduciary (whether in a testate or

intestate administration) and that fiduciary is willing to act in New Jersey regarding all of the decedent's New Jersey assets without engaging in a full New Jersey ancillary probate or administration. In these cases, the domiciliary foreign fiduciary can record the fiduciary's foreign appointment and any bond, which recording authorizes the fiduciary to administer or collect the nonresident decedent's New Jersey assets without appointment as local fiduciary (see Recording Appointment of Domiciliary Foreign Fiduciary).

- When the nonresident decedent's jurisdiction of domicile appointed a domiciliary foreign fiduciary, after 60 days from the death of a nonresident decedent, the domiciliary foreign fiduciary can collect the nonresident decedent's New Jersey personal property by an affidavit procedure, without any filing with the New Jersey courts (see Collection of New Jersey Personal Property by Domiciliary Foreign Fiduciary Affidavit).
- When the nonresident decedent died intestate and the decedent's estate qualifies for the small estate affidavit procedure under New Jersey law. A surviving spouse, civil union partner, domestic partner, or heir may use this process to transfer the decedent's New Jersey assets without recording the foreign appointment of a domiciliary foreign fiduciary and also without issuance of letters in New Jersey. (See Small Estate Affidavit).

These processes may be used together, where applicable. In any of these circumstances, there may still be reasons to prefer the appointment of a local fiduciary by issuance of formal letters rather than use of these alternative processes.

Recording Will of Nonresident Decedent to Administer Real Property

If a court in a nonresident decedent's state of domicile admitted the decedent's will to probate and the will appears to be valid under New Jersey law (see Ancillary Probate of a Nonresident Decedent's Valid Will), the nonresident decedent's New Jersey real property can be transferred to those entitled to possession without formal ancillary estate administration in New Jersey. A domiciliary foreign fiduciary or a devisee under the will can use this process to transfer the property by recording, in the Surrogate's Court, duly exemplified copies of both:

- The nonresident's will, admitted to probate in another jurisdiction.
- The foreign court's certificate or judgment of probate.

(N.J.S.A. 3B:3-27.)

If the domiciliary foreign fiduciary seeks to convey the real estate, the fiduciary must also record evidence of the fiduciary's appointment, consisting of the letters issued to the fiduciary and any fiduciary bond (see Recording Appointment of Domiciliary Foreign Fiduciary).

These recordings:

- Are sufficient for the domiciliary foreign fiduciary or devisee to prove title to and convey real property of the nonresident decedent located in New Jersey.
- Effectively vest the property ownership in a devisee's or other transferee's name, without the need for an ancillary probate administration.
- Has or have the same effect as if the will was admitted to probate and letters were issued in New Jersey.

(N.J.S.A. 3B:3-27.)

Recording Appointment of Domiciliary Foreign Fiduciary

Where a domiciliary foreign fiduciary was appointed, there may be no need to appoint a local fiduciary. The domiciliary foreign fiduciary may be able to administer estate property located in New Jersey, either in a testate or intestate administration, by recording the foreign appointment in New Jersey (though if in a testate administration, the fiduciary also needs to record the nonresident decedent's will, as described in Recording Will of Nonresident Decedent to Administer Real Property).

If a court in the jurisdiction of the nonresident decedent's domicile appointed a domiciliary foreign fiduciary, that foreign fiduciary may record and file exemplified copies of the fiduciary's letters and any bond issued by the foreign jurisdiction with the office of the clerk of the Superior Court (or, if the nonresident also owned real estate, in the Surrogate's Court). The domiciliary foreign fiduciary may then exercise over New Jersey property all powers the fiduciary has if New Jersey appointed the fiduciary, including the power to release and discharge real or personal property of the estate from a mortgage, judgment, or other lien or encumbrance held by the decedent (N.J.S.A. 3B:10-9 and 3B:14-29).

By recording the foreign appointment in New Jersey, the domiciliary foreign fiduciary submits personally to the jurisdiction of New Jersey courts in any proceeding relating to the estate (N.J.S.A. 3B:14-49 and see [Practice Note, Understanding Probate in New Jersey: Jurisdiction Over Estate Proceedings](#)).

Because the domiciliary foreign fiduciary has authority to administer New Jersey property after recording the foreign appointment, there is often no reason to seek issuance of letters in New Jersey (N.J.S.A. 3B:14-29). Recording the domiciliary foreign fiduciary's appointment in New Jersey is simpler than seeking issuance of letters in New Jersey and generally more cost effective.

However, in certain circumstances, a fiduciary may still want to seek full ancillary administration (the issuance of letters and the appointment of a local fiduciary) in New Jersey. For example:

- A third party transacting with the fiduciary may decide to require letters issued in New Jersey.
- A fiduciary may prefer New Jersey court supervision if there are significant creditor claims or if the fiduciary expects disputes among beneficiaries.

However, a domiciliary foreign fiduciary may use this method to administer New Jersey property only if no ancillary administration is open or pending in New Jersey. Once an ancillary administration is opened the domiciliary foreign fiduciary's power under this administration method terminates. (N.J.S.A. 3B:14-27 and 3B:14-28.)

Termination of Domiciliary Foreign Fiduciary's Power

The domiciliary foreign fiduciary's power to act regarding New Jersey property continues only if no administration is open or pending in New Jersey for the nonresident decedent's New Jersey estate (N.J.S.A. 3B:14-28 and 3B:14-30). If New Jersey appoints a local fiduciary or an interested person applies for appointment, the domiciliary foreign fiduciary's power terminates (N.J.S.A. 3B:14-30 and see [Initiating an Ancillary Probate or Administration](#)).

In those circumstances, the domiciliary foreign fiduciary's only remaining role regarding the nonresident decedent's New Jersey property is generally to receive remaining estate assets in New Jersey from the local fiduciary on final settlement of the New Jersey estate administration. (N.J.S.A. 3B:23-42 and see [Final Distributions](#)). However, a New Jersey court may allow the domiciliary foreign fiduciary to exercise limited powers to preserve the estate (N.J.S.A. 3B:14-30).

Once a New Jersey court issues letters, the local fiduciary:

- Is subject to all duties and obligations accruing from the domiciliary foreign fiduciary's exercise of fiduciary powers (see [Authorities and Duties of Local \(Ancillary\) Fiduciary](#)).

- May be substituted for the domiciliary foreign fiduciary in any action pending before a New Jersey court.

(N.J.S.A. 3B:14-30.)

A third party may engage in a transaction with the domiciliary foreign fiduciary before the third party knows that New Jersey issued letters to a local fiduciary or that an application for those letters is pending. In those cases, if the third party does not have actual notice of the issuance of letters in New Jersey or that an application for such letters is pending, the third party is generally not liable for acting in reliance on the domiciliary foreign fiduciary's authority. (N.J.S.A. 3B:14-30.)

A foreign judgment entered either in favor of or against the domiciliary foreign fiduciary is as binding on the local fiduciary, on notice to the local fiduciary, as if the local fiduciary was a party to the adjudication (N.J.S.A. 3B:14-43).

Collection of New Jersey Personal Property by Domiciliary Foreign Fiduciary Affidavit

After 60 days from the death of a nonresident decedent, the domiciliary foreign fiduciary may present a third party with proof of the fiduciary's appointment to:

- Take possession or control of the nonresident decedent's New Jersey personal property.
- Collect a New Jersey debt, obligation, stock, or chose in action of the nonresident decedent.

(N.J.S.A. 3B:14-25.)

A third party possessing or controlling New Jersey personal property of the nonresident decedent or owing a debt to the nonresident decedent may deliver that personal property or pay that debt to the domiciliary foreign fiduciary if the fiduciary provides both:

- Proof of the domiciliary foreign fiduciary's appointment, consisting of authenticated copies of the foreign court's order and the letters issued to the representative (or other proof of authority).
- An affidavit stating:

- the date of the letters or when the fiduciary first received authority to act;
- that New Jersey did not issue letters and no application for the issuance of letters in New Jersey is pending; and
- that the domiciliary foreign fiduciary is entitled to payment or delivery.

(N.J.S.A. 3B:14-25.)

In these cases, third parties are protected from liability if they:

- Rely in good faith on an affidavit complying with N.J.S.A. 3B:14-25.
- Pay or deliver personal property to the domiciliary foreign fiduciary.

(N.J.S.A. 3B:14-26.)

However, a third party may not pay or deliver the nonresident decedent's New Jersey personal property under this procedure if a resident creditor of the decedent notified the debtor or the person in possession of the personal property that the property should not be delivered to the domiciliary foreign fiduciary (N.J.S.A. 3B:14-27). In these cases or where the third party does not honor an affidavit and proof of the foreign appointment, the domiciliary foreign fiduciary can file authenticated copies of the fiduciary's appointment (order of appointment and letters testamentary or of administration) and bond, if any, with the appropriate New Jersey court to acquire the status and powers of the New Jersey fiduciary (see N.J.S.A. 3B:10-9; N.J.S.A. 3B:14-29 and Recording Appointment of Domiciliary Foreign Fiduciary).

Small Estate Affidavit

A nonresident decedent's surviving spouse, civil union partner, domestic partner, or heir can seek appointment as local fiduciary by affidavit, instead of by the formal issuance of letters in New Jersey, to administer a small intestate estate (where the value of the intestate estate does not exceed \$50,000) (N.J.S.A. 3B:10-3).

If no spouse, civil union partner, or domestic partner survives the decedent, an heir of the decedent may administer the small estate by affidavit if the value of the estate was \$20,000 or less. If one heir makes an application to administer the estate by affidavit, the application must include the written consent of any other heirs. (N.J.S.A. 3B:10-4.)

The affidavit can be filed in the county where any New Jersey asset of the nonresident decedent is located (N.J.S.A. 3B:10-3 and 3B:10-4).

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