

Walter Kane Series

**NEW JERSEY ESTATE AND
TRUST ADMINISTRATION AND
PROCEDURES MANUAL**

Navigating a New Jersey Estate Administration

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**Formerly known as Walter Kane's
New Jersey Probate Procedures Manual
(The Red Books)**

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INTRODUCTION

Much has changed since I published the 2009 version of the *New Jersey Probate Procedures Manual*. In fact, the greatest challenge in writing this type of book involves making an educated guess as to when the next major change in the law might come along. After I wrote the 2009 version of this book, New Jersey has adopted an entirely new Trust Code (a variation of the Uniform Trust Code); the federal taxation of estates and trusts has changed dramatically through several major pieces of tax legislation; and New Jersey has repealed its estate tax (but retained its inheritance tax). Indeed, while many estates were subject to federal or New Jersey estate taxes 20 years ago (when federal and State exemptions were around \$675,000), now it is entirely possible that nearly all New Jersey residents will not be subject to estate taxes. And one can be almost certain that sometime after this book is published, something will change yet again.

So rather than just focus on trying to keep up on every change of the law, this revision focuses on a broader theme: the increasing use of revocable trusts (funded or unfunded) as a mechanism for the transmission of wealth at death. The 2009 version of this book used the term “Probate” in its title, thus implicating the disposition of an estate by a traditional will that would be admitted to probate. “Probate” was also a principal theme of predecessor books, as described below.

While this version continues to cover in detail the probate process and the administration of estates governed by wills or intestacy, it has been enhanced by increased coverage of the role that trusts play in the administration of assets at death. It focuses on the administration of such trusts in the period shortly after death – what historically might be viewed as the period of “estate administration.” Whether the disposition involves a will that “pours over” assets to a revocable trust for disposition, or whether the revocable trust was funded during the grantor’s lifetime and the grantor has now died, many obligations and administration issues arise, as the death of the testator or grantor implicates a host of issues relating to the “devolution” of assets after death, such as the identification of assets, the payment of estate or inheritance taxes, the satisfaction of creditor claims, and the actions required to conclude the administration and transfer assets to the trust that might govern their administration. Some might view the use of a revocable trust as a “testamentary substitute,” but that is not always the case (or at least not in form, even if in substance the resulting dispositions might be similar).

Given all of that, the title of this work has been changed to reflect the increasing role of trusts in the administration of, or devolution of, assets after death.

The 2009 version of this book, “*New Jersey Probate Procedures Manual*,” might have been viewed as a sequel to a longtime best seller bearing a similar name, but like many sequels, it differed greatly from than the original publication. The *Manual* was originally written by the late Walter Kane, Esq. and published for many years; it last appeared in 1998. (Before his death, Mr. Kane devoted many hours of his long career to teaching estate issues.) It assisted many New Jersey attorneys in navigating basic (and perhaps somewhat advanced) New Jersey estate administrations. Essentially, this book has always involved the transfer of wealth upon death.

While the 2009 version of this book covered some of the same subject matter as the Kane versions of the *Manual*, the text and style became entirely new. Beginning in about 2005, the New Jersey Institute of Continuing Legal Education (“NJICLE”) sought to revise the Probate Procedures Manual and other components of the Kane series regarding estate matters. Three attorneys who practice in the estate and trust field (Steven Mignogna, Esq., Glenn Henkel, Esq. and myself) undertook to write individual volumes (and then worked together in a collaborative effort to edit each other’s works). As a result, in 2005, NJICLE published Mr. Mignogna’s book, the *New Jersey Estate and Trust Litigation Manual* (herein, the “**Estate Litigation Book**”). In 2006, NJICLE published Mr. Henkel’s book, the *New Jersey Estate Planning Manual* (herein, the “**Estate Planning Book**”). Mr. Mignogna, Mr. Henkel and I decided to work collaboratively on this multi-volume project and many subsequent updates and CLE programs on similar subjects, because all of us have devoted many years to continuing legal education projects, such as numerous seminars for NJICLE. I have enjoyed and greatly benefitted from my collaboration with both of them. I think it fair to say all of us believe it worthwhile to create a repository of our combined experiences in this field for the education of those who endeavor to practice in this often confusing and sometimes arcane area.

In writing both versions of this book, I recalled the many occasions in which I confronted questions from participants in continuing legal education seminars. Those questions often identified a common theme -- the continuing legal education process often focuses on *how* a particular task is accomplished, but less emphasis is placed on *why* things are done in a particular manner. In writing this book, I chose to focus on the latter concept by going beyond the many works that cover the “how to do” aspects of estate administration. I believe it important that those who handle this work understand the numerous concepts, including the fiduciary duties, that guide the core precepts of an estate administration. It is sometimes difficult to understand the practical steps that are required to administer an estate without understanding the legal theories that mandate those processes. For example, N.J.S.A. 3B:1-3 and cases like *Matter of Sapery*, 28 N.J. 599 (1959), both recognize that a person’s death involves an important legal transition; they confirm that most concepts governing the devolution of wealth are creatures of statute and common law. To a great extent, this book can serve only as an introduction to the subjects covered, as this book touches upon many subjects that could individually become the subject of a full-length treatise (for example, it only touches upon details in subjects covered in the **Estate Litigation Book** and the **Estate Planning Book**).

At the same time, I have endeavored to provide enough practical guidance to enable those who use this book to proceed through an estate administration. While significant effort has been made to write this book in a manner that would make it comprehensible to the non-attorney, I caution those who might seek to administer an estate without counsel that they could be taking unwarranted risks in doing so. In certain chapters of this book, and through the many forms attached, I have set forth some very practical materials (including documents, letters and checklists) that I thought might be helpful to those who work in this area. In all cases, the exhibits relevant to a particular chapter follow that chapter. But I provide those exhibits with some caution, reminding those who undertake estate administration work that they should endeavor to learn all of the relevant legal concepts before utilizing the attached forms and checklists. In other words, in order to use one of those forms, the user has to understand first the purpose of the form and how it must be modified to fit their specific circumstances.

In some areas of this book, I have used forms and other documents relating to a hypothetical estate of John Adams (yes, our second president), who is survived by his wife, Abigail and his son, John Quincy Adams. Of course, for these purposes, we treated him as dying in New Jersey, and we have him dying currently, rather than nearly 200 years ago. Indeed, he probably would not understand many of the concepts that apply today – certainly, features such as the federal estate tax did not exist then.

Acknowledgments

I owe much to those who participated in the preparation of this book in so many ways. Of course, my contributing editors, Steve Mignogna and Glenn Henkel, brought their extensive experience and skills to bear in reviewing this text. I have greatly enjoyed collaborating with them on many projects over the years, whether on these books or other educational projects. Each of us brings different perspectives to these projects – and in fact, we probably could debate any single word of this book for hours – but ultimately, we share a desire to help educate our colleagues and peers.

In that regard, readers should bear in mind that in many areas, the comments provided here are abstract in nature, and my views (and theirs) might change when considered in the context of specific facts.

I am also greatly indebted to those in my law firm (McCarter & English, LLP), including my Partners, Laura Kelly (who worked extensively on the guided tour of estate tax returns) and Timothy Ferges, as well as my Associate, Nicholas Keller. Similarly, when working on estate matters, I benefit greatly from the wisdom and experience of my paralegals, including Tracy Greulich and Karen Golubieski; their experiences contributed greatly to this project. I also remember working for many years with my former paralegal, Kirsten McKay. Although she is now retired, Kirsten brought a unique perspective to the 2009 version of this book because before she joined McCarter & English, she worked for many years as the paralegal for the late Walter Kane, the author of the earlier version of this book.

And this entire project would not have come together without the extensive assistance of my secretary, Yonette Adams, who helped me at every step of the way.

In addition, I thank Bergen County Surrogate Michael Dressler and his excellent staff for assistance in providing the comprehensive probate forms (and for preparing them as might have been done in the hypothetical Adams estate).

Preparing a work of this magnitude requires a great deal of time at night and on the weekends. I never would have been able to complete it without the constant support and encouragement of my wife and two sons. My wife (Phyllis Gutto Brew, Esq.), who is also an estate and trust attorney, provided valuable insights regarding various aspects of this book. Above all, they helped me overcome significant challenges that delayed this new version of this book.

I thank all of them for their help in bringing this project to conclusion.

Gerard G. Brew – February 28, 2021

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Mr. Brew is the author of the prior *New Jersey Probate Procedures Manual* (NJICLE 2009) and a contributing editor to various versions of the *Estate & Litigation Manual* (NJICLE 2020, authored by Steven K. Mignogna, Esq.) and the *New Jersey Estate Planning Manual* (NJICLE 2007, authored by Glenn A. Henkel, Esq.). He has also served as an adjunct professor of law at New York Law School, where he has taught New Jersey estate administration.

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Steve serves on the Advisory Committee of the Heckerling Institute. He is a Fellow of the American College of Trust and Estate Counsel (ACTEC) and the ACTEC State Chair for New Jersey. Steve is also the Chair of ACTEC's Fiduciary Litigation Committee. He is active in ACTEC in several other areas, including the Professional Responsibility Committee, the Program Committee, the Joint Task Force of ACTEC and the National College of Probate Judges, and the Advisory Committee to ACTEC's Mid-Atlantic Fellows Institute.

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Steve is a national lecturer and author. He has lectured and published for ACTEC, the Heckerling Institute, the National College of Probate Judges, the American Bar Association, the New Jersey Bar Association, the New Jersey Institute for Continuing Legal Education, the American Law Institute Continuing Legal Education Group, the Duke University Estate Planning Conference, the Delaware Trust Conference, and Estate Planning Councils and other professional groups around the country. He authors the treatise, *Estate and Trust Litigation*, and is the editor and contributing author of *The New Jersey Estate Planning Manual* and *New Jersey Probate Procedures Manual*. In 2017, the New Jersey Institute for Continuing Legal Education honored him with the Distinguished Service Award.

Steve is also a Senior Fellow of the Litigation Counsel of America, a national honorary society for trial lawyers, and has been named to various "top lawyer" lists, including *The Best Lawyers in America*.

An attorney since 1989, Steve has been with Archer & Greiner since 1988, when he joined the firm as a law clerk. Steve is admitted to the bars of the state and federal courts of New Jersey and Pennsylvania. He is also admitted to the Third Circuit Court of Appeals and the United States Supreme Court.

Steve earned his law degree from Rutgers University School of Law, and obtained his Bachelor's Degree from St. Joseph's University in Philadelphia. Along with his service to the legal profession, Steve remains active in various charitable and community organizations, including the Philly Pops Board, the Alicia Rose Victorious Foundation Board, the Loyola Executive Council and the Barbelin Society of St. Joseph's University, the Chevaliers du Tastevin, and the Knights of Columbus. In 2020, he was recognized by the Camden County Bar Association as the Professional Lawyer of the Year, through the New Jersey Commission on Professionalism in the Law. In 2017, Steve received the Excalibur Award from the Bishop Eustace Preparatory School Alumni Association, recognizing his lifetime achievement in civic, religious, humanitarian, and professional endeavors.

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