HOW TO PROBATE A WILL IN THE SOMERSET COUNTY SURROGATE'S COURT

Frank G. Bruno, Surrogate
Somerset County

THE BASICS OF
ESTATE PLANNING
AND
ESTATE ADMINISTRATION

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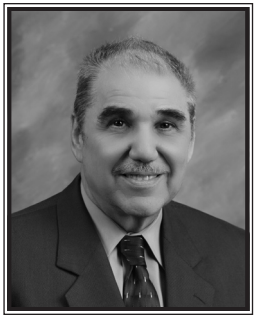


It is my privilege and pleasure to address you as Judge of the Surrogate's Court of Somerset County. The many duties of the Surrogate's Court include the probate of wills, appointment of estate administrators, appointment of guardians, acting as Deputy Clerk to the Superior Court of New Jersey in contested probate actions as well as incapacity hearings for adults, and processing adoptions. In addition the Surrogate is responsible for recording and preserving records of the proceedings in the Surrogate's Court and making those records available to the public.

This booklet offers an introductory and general overview of issues that I believe are important to you and your family including the importance of estate planning and an overview of what to expect when you appear in our office to probate a will or to be appointed administrator of an intestate estate.

I have included a glossary at the end of this booklet that defines some of the unique terms used in connection with wills and the probate process.

In this booklet we provide address some of the most frequently asked questions:

- What should be included in an estate plan?
- What is a self-proving will?
- Where should I store a will?
- What are the various types of Powers of Attorney?
- Should I consider a Living Trust?
- When is a will admitted to probate?
- How do I begin the process?
- What if there is no will?

The Surrogate's Court is here to help you in every way. The above questions are answered in this booklet and will guide you through the maze of concerns that follow the loss of a loved one.

We look forward to helping you and your family during these difficult times. If you have any questions, please refer to the phone number and address for further information.

Frank G. Bruno
Frank G. Bruno
Somerset County Surrogate

THE BASICS OF ESTATE PLANNING

You will benefit from taking the time to prepare an estate plan, regardless of how simple or complex your estate may be. Planning can save your heirs time, money and perhaps some emotional pain. Remember though, the material presented here is not a substitute for sound legal advice from a qualified attorney or other professional.

Personal organization is important in any estate plan. Consider the following:

- Create an inventory of your bank accounts, IRA accounts, stock funds, etc., insurance policies, employment benefits and other assets. If applicable, list the contact individual. Reduce the information to a central document. Update the information regularly.
- If you have a safe deposit box, it is a good idea to put a second name on the box so that individual can access the contents after death.
- Tell someone where your papers and records are kept. It does not mean you have to tell them what assets you hold or their value but someone should know where they will find your important papers if the need arises.
- Weed out papers that are no longer relevant.
- Invest in a shredder to further protect yourself against identity theft.

The Basics Of Estate Administration. As noted earlier, the staff in the Surrogate's Court is there to assist you in the initial phase of administering an estate. Our office is open from 8:30 a.m. to 4:30 p.m., Monday through Friday except holidays. While the Surrogate's Court staff is prohibited by judiciary rules from providing legal advice, we can answer procedural questions relating to the probate or intestate succession process and are happy to do so.

Wills

A will is a legal document by which you state how your property is to be divided at the time of your death. The principle reason for preparing a will is to control the manner in which property is passed at death. Other reasons include naming the individual who will control the estate, naming a guardian for minor children, appointing a trustee to control funds and in many cases to engage in tax planning. When no will exists, real and personal property is not distributed according to the decedent's wishes. Rather, it is distributed according to the statutes of New Jersey. An administrator must be appointed for the estate.

Limitations on distribution by will. Certain types of property are not transferred by a will. Frequently referred to as non-probate assets, this type of property includes the following:

- Jointly held property, such as real estate and bank accounts.
- Pension and other employment benefits with named beneficiaries.
- IRA accounts with named beneficiaries.
- Life insurance policies with named beneficiaries.

Beneficiaries. Under New Jersey law you are not obligated to leave property to any specified individual. There is a provision in the law for a spouse who is left out of a will to claim a spousal share if certain conditions are met. Children born or adopted after a will is executed may also have a claim under certain conditions. If you are not leaving a share to a child it may be prudent to make a reference to that fact in the will, though it is not required.

Will challenges are frequently brought by disinherited children or children who receive a small inheritance claiming the decedent was not of sound mind when the will was made or was unduly influenced by someone else leading to the exclusion of the complaining party.

WARNING: *If you are assisting a parent or anyone else in preparing a will or estate plan, make certain they are represented by an independent attorney who has no relationship with you. Conflicts of interest are a common reason for starting will contests.*

Tangible Personal Property. Under New Jersey law, a will may make reference to a separate writing that makes provisions for disposition of tangible personal property after your death. Tangible personal property is comprised of assets like jewelry, furniture and art. Stocks, bonds, and automobiles are not considered tangible personal property. This list, which should be kept with your will, may be changed as often as you like without executing a new will.

Testamentary Trusts. There are several reasons you may want to create a trust in your will. The most common reasons are to hold assets for minor children or to take advantage of tax saving strategies that usually involve a trust for a surviving spouse. The trust will terminate at some point in the future when a specified event occurs. In some cases a special needs trust may be created to protect a handicapped child or other beneficiary. More is stated about Special Needs Trusts later in this booklet. A trust can also be used to control a beneficiary's access to assets where waste is a concern.

Store-bought/computer-generated and other self-help kits. If the requirements of execution are met, these wills are valid. Often they are not properly executed or important terms are missing, such as naming a fiduciary, which may result in your wishes not being followed. Be wise and make certain that requirements of the law are followed. The law is very specific about the manner in which a will must be executed. An effort to save a few dollars

today may cost your estate hundreds or thousands of dollars later. Educate yourself before using a self-help kit. While these kits may help you save on professional fees, they are not a substitute for sound legal advice.

Execution of the Will. All wills should be executed so they will be self-proving. A self-proving will requires two witnesses to the testator's signature and a notary or attorney who acknowledges that the witnesses and the testator signed in his or her presence. ***WARNING:*** *The notary or attorney cannot be one of the witnesses. This is a common mistake in the execution of self-help wills. If the will is not self-proving, a witness to the will must sign a witness proof in order for the will to be admitted to probate.*

Care of your will. Keep the original will in a safe, secure location. A safe-deposit box is okay if you think it is secure. A box can be opened at the time of death to remove a will and life insurance policies. It is advisable to let your executor know where the original will is stored. It is also important that you not mark up, make changes to, or unstaple your original will as this may compromise its validity, or require approval by the Superior Court before the will is admitted to probate.

Updating your will. It is advisable to review and update your will every three to five years or anytime there is a major change in your family situation. Changes to your will may be accomplished through a codicil to your existing will or by executing an entirely new will. Please note that codicils must be executed and acknowledged in the same manner as a will.

Living Will And Health Care Directive. A living will or health care directive, coupled with a medical power of attorney, allows you to designate the level of care you desire should you be in a life-threatening medical condition or emergency and also appoints the person you wish to make decisions on your behalf if you are unable to do so. A medical power of attorney authorizes your designated agent access to your medical records even when you are not in a medical emergency. The documents should reference the Federal HIPAA legislation.

Power Of Attorney. A power of attorney is a written document in which another adult person is authorized to act on your behalf for whatever purposes are stated in the document. With this instrument, a spouse, friend or family member, called an Agent, can act on behalf of you, the Principal. A power of attorney may be limited to a single activity, such as attending a real estate transaction, or it may grant general powers that continue indefinitely.

General Power of Attorney. Absent language making a general power of attorney durable, this type of power of attorney may not be valid if the principal becomes mentally incapacitated. The authority granted under a power of attorney ends when the principal dies.

Trusts Other Than Testamentary Trusts. There are a variety of trusts created which are used by individuals to address specific needs that may not be met by a will. Be cautious before paying for a living trust. In many cases they are more expensive than a will and for most New Jersey residents, a living trust is an unnecessary expense. This type of trust is often advertised as a protection against costly probate fees and court supervision. While this is true in some states, probate in New Jersey is inexpensive and it is rare that a New Jersey Court has any involvement in the estate once the will has been admitted to probate. In general, living trusts are subject to the same estate administration expenses as an estate administration expenses as an estate established under a will.

Special Needs Trusts. This type of trust is appropriate where a beneficiary of your estate is receiving government assistance and may be disqualified from that assistance if they receive a direct distribution from your estate. There are many laws and regulations that affect the creation of a Special Needs Trust which are beyond the scope of this booklet. Professional guidance is a must in creating this type of trust.

What Do I Need To Bring To The Surrogate's Court In Order To Probate A Will?

In order for a will to be admitted to probate, the following documents and information must be supplied to the Surrogate's Court:

1. Original will.
2. Original codicil, if applicable.
3. Certified copy of death certificate.
4. Name, address and telephone number of each fiduciary who will qualify.
5. Name and address of each beneficiary under the will and the decedent's other next of kin.
6. The probate fee, which usually ranges between $100 and $200 and can be paid by cash or check. Please be aware that checks drawn on accounts with the name of the decedent are usually not accepted as those accounts are often closed before the check clears the bank.

HOW TO PROBATE A WILL IN SOMERSET COUNTY

Probate is often assumed to be a terrible process that must be avoided. It is not. It is a common misconception that the process of probating a will is complicated and expensive. In fact, in New Jersey, and particularly in Somerset County, probate in the vast majority of cases is simple and inexpensive. In Somerset County an individual can probate a will in the Surrogate's Court, with or without the assistance of a lawyer, in approximately thirty minutes. We do not require appointments in the Somerset County Surrogate's Court.

What is Probate? Probate is the process by which a Last Will and Testament is presented to the Surrogate's Court and an application is made by the named executor for appointment as the fiduciary (executor) to represent the interests of the estate. A judgment admitting a will to probate is issued by the Somerset County Surrogate if the testator resided in Somerset County at the time of his or her death or owned property in Somerset County at that time.

When to Probate the Will. Pursuant to New Jersey law, a will is not admitted to probate until the tenth day following the date of death of the testator. You may begin the process with the Surrogate's Court at any time prior to the tenth day, but the Surrogate cannot appoint the fiduciary until the tenth day has passed.

In addition, if a will is not self-proving, then a person who signed the will as a witness or a bystander witness (one who witnessed the testator and two witnesses signing the will but did not sign the will as a witness) must also come to the Surrogate's Court to authenticate the will or sign a witness proof in front of a notary if they cannot come to the Surrogate's Court.

If a will is self-proving, there is no need for a witness to the execution of the will to come to the Surrogate's Court to authenticate his or her signature. If in doubt, ask a Probate Clerk at the Surrogate's Court or an attorney.

How Does the Process Work?

When you arrive at the Surrogate's Court, you will meet with a Probate Clerk. The Probate Clerk will review the original will to ensure that it has been properly drawn, signed and witnessed. If there are no problems with the will or with the items you have brought, the named executor will sign qualification papers, pay the fee, the Judgment of Probate will be entered and the executor will be given proof of their appointment, referred to as Letters Testamentary.

The Probate Clerk will also ask you how many executor certificates you will need. An executor certificate is additional proof that you are the representative of the estate and is delivered to institutions where you are claiming funds or asking for records. You will generally need an executor's certificate, with a raised seal, for each asset to be claimed by the estate. The current cost is $5.00 per certificate.

Many executors find it easier to get extra certificates to avoid the need to purchase more at a later date. However, be aware that some financial institutions and most stock brokers require that the executor certificate be no more than 60 days old. Additional certificates can be obtained as necessary.

Once the judgment for probate is signed and Letters Testamentary have been issued, the will is deemed to have been admitted to probate.

Notification Requirements. After the will is admitted to probate the executor must send written notification to the decedent's spouse, heirs, next of kin and beneficiaries under the will that the will has been probated. The notice must indicate the place and date

of probate, the name and address of the executor and a statement that a copy of the will shall be furnished upon request. This notice must be sent within 60 days following the date of probate and a proof of mailing must be filed with the Surrogate no later than 10 days after the notice is mailed. The fee for the proof of mailing is $5.00 per page and must accompany your submission. Make checks payable to the Somerset County Surrogate.

If the decedent left any portion of the estate to a charitable organization, the notice and a copy of the will must also be sent to the New Jersey Attorney General. If an address is unknown, the notice must be published in a newspaper of general circulation in the county where the will was probated.

WHAT COMES NEXT?

Following probate, the executor begins the process of administering the estate. It is the executor's duty to collect the decedent's assets, manage them during administration, maintain records, pay debts and expenses, compute and pay income, estate, inheritance and any other taxes, and distribute the estate assets to the designated beneficiaries. As necessary, the executor enlists the services of professionals such as an attorney or accountant to assist the executor with performance of the administrative duties.

The executor may also be asked to assist with the collection of non-probate assets and may need information regarding those assets where they are required to be included in the computation and payment of income and estate taxes.

Potential Tax Liability. There are three distinct tax liabilities to which New Jersey decedent's estates and beneficiaries may be subject. The Federal estate tax and the New Jersey estate tax are imposed upon the decedent's estate. The New Jersey inheritance tax is assessed against the inheritance received by beneficiaries.

It must be noted, tax laws are complex and fluid; therefore I recommend that executors consult with an attorney or qualified accountant to determine if the estate they are administering is subject to any estate or inheritance taxes.

Federal Estate Tax

Federal law imposes an estate tax on estates that exceed a certain value. At the time this booklet is being written, there is uncertainty as to what portion of an estate will be subject to taxes in the future. There have been many plans discussed regarding the Federal estate tax but no final action has yet been taken. Generally there is no Federal estate tax imposed on a surviving spouse and it seems unlikely new legislation will eliminate this benefit.

New Jersey Estate Tax

New Jersey also imposes an estate tax but does not follow the Federal exemptions. Generally New Jersey estates in excess of $675,000 may be subject to the New Jersey Estate Tax. There are exemptions and credits that may reduce the tax burden, but again, I recommend that you consult a qualified professional to make certain you are in compliance with the law.

New Jersey Transfer Inheritance Tax

How the Tax Works. In addition to the New Jersey estate tax, New Jersey also has an inheritance tax. The inheritance tax is assessed against the amount received by an individual beneficiary.

Parties Exempt from the Inheritance Tax. If the beneficiary under a will is a spouse, child, parent, grandchild, grandparent or step-child, no inheritance tax is due regardless of the size of the inheritance. These beneficiaries are called Class A beneficiaries.

If a gift is left to a charity, an educational institution, a church, a hospital, a library or the State of New Jersey or its political

subdivisions, no inheritance tax is due. In addition, transfers or gifts having a value less than $500 are also exempt from inheritance tax.

Recipients That Pay Tax. All other beneficiaries will be required to pay an inheritance tax, though gifts to siblings for less than $25,000 are exempt. The tax rate ranges from 11 percent to 16 percent.

Tax Waivers. Some assets (real estate, stocks and bank accounts) require the executor to obtain a tax waiver certificate from the New Jersey Division of Taxation before they can be transferred. Waivers are not generally required to transfer cars, personal property such as household goods and jewelry, and most employee benefits.

Class A beneficiaries can usually receive assets from a financial institution by completing a Self-Executing Waiver, Form L-8. This Self-Executing Waiver is filed with bank, financial institution or broker where the asset is located and requires no action by the State. In the L-8 Affidavit the party completing the form is certifying that they are a Class A beneficiary and no inheritance tax is due.

Real Estate. If a Class A beneficiary is receiving a gift of real estate, a Form L-9 is filed with the Individual Tax Audit Branch-Inheritance and Estate Tax office in Trenton. This form requires a bit more work than the Form L-8. Upon receipt and approval of the Form L-9, Trenton will issue a tax waiver certificate that can be filed with the County Clerk, which will be a representation that the State has no claim on the real estate for inheritance taxes.

If a husband and wife own real estate as tenants by the entirety, the surviving spouse need not file a Form L-9, as the property passes to the surviving spouse by operation of law upon the death of the spouse.

Inheritance Tax. A formal Inheritance Tax Return will have to be filed if the estate does not pass 100 percent to Class A beneficiaries or if the estate exceeds $675,000. All of the necessary forms for filing the Inheritance Tax Return can be obtained from the Individual Tax Audit Branch, Inheritance and Estate Tax, New Jersey Division of Taxation, P.O. Box 249, Trenton, New Jersey 08695-0249 or by accessing their web site at www.state.nj.us/treasury/taxation/. In addition, the Branch will answer questions if you call (609) 292-5033.

If a formal Inheritance Tax Return is required, it is important to remember that you will need to attach a copy of the decedent's will and any amendments (codicils), a copy of the decedent's last full year's federal income tax return (Form 1040), and a certified check for any tax due.

Formal tax returns are due eight months after the decedent's death. If the inheritance tax is not paid within eight months, interest will accrue and no tax waivers will be issued until payment is received. ***CAUTION:*** *This is one month earlier than the federal and New Jersey estate tax returns are due.*

Executor and Administrator Fees. The executor or administrator is entitled to a fee for services performed. Under New Jersey law, the executor of an estate is generally entitled to the following commissions:

a. 6 percent on all estate income;
b. 5 percent of the estate corpus (principal) up to $200,000;
c. 3.5 percent on excess above $200,000 up to $1,000,000;
d. 2 percent on excess over $1,000,000 or such other percentage as the Superior Court may determine.

There are different rules for commissions when there is more than one executor, or when the executor has rendered unusual or extraordinary services. Commissions are also payable to individuals serving as trustees and guardians.

Refunding Bonds

Once all assets of the estate have been disbursed, the executor must have each beneficiary sign a Refunding Bond. The executor should also have each beneficiary sign a Release at the same time. By executing a Refunding Bond, the beneficiary is agreeing that, in the event the assets distributed to him or her are needed at a later time to pay any debt of the estate, the beneficiary will return part or all of the assets needed to pay estate debts. This provides the executor with security in the unlikely event claims are subsequently made against the estate. The release absolves the executor from any liability pertaining to his or her administration of the estate.

The executed Release and Refunding Bond (as executed in front of a notary public) should then be filed with the Surrogate's Court. When all Releases and Refunding bonds have been filed, the estate is then closed.

These comments are necessarily only a general overview of the probate process. Should you have any questions, the Somerset County Surrogate's Court is here to help. It may also be appropriate to seek the advice of an attorney, accountant or other professionals to help guide you through the probate procedures.

MISCELLANEOUS

When Someone Dies Without a Will

Intestate Succession. When no will exists, real and personal property is not distributed according to the decedent's wishes. Rather, it is distributed according to the statutes of New Jersey. An administrator must be appointed for the estate. The following information is necessary for an application for administration to be processed:

1. Certified copy of death certificate.
2. Name and address of all next of kin.
3. List of assets in decedent's name.
4. Value of the assets at the time of death.

When an individual seeking appointment as administrator submits the required information, the Surrogate's Court will determine the need for a bond. The bond acts as an insurance policy that the administrator will perform his or her duties. Once the necessary forms are executed, and any required bond returned, the administrator will receive Letters of Administration and the Administrator Certificates.

New Jersey law designates the right to apply as administrator to the person who is the nearest degree of kinship to the decedent. In the event multiple individuals are eligible to apply, they will need to agree on who will serve by renouncing in favor of the designated person or they may all qualify and serve together.

GUARDIANSHIPS

Appointment of Guardian. A guardian may be appointed by the Court for minor children. In order to sell or dispose of a minor's interest in a parent's land, a guardian must be appointed by the Superior Court to sign the deed for them. The expense of having the guardian appointed, bond for the guardian, appraisals, court costs and attorney's fees are charged to the minor.

In some cases, the guardian applies to the Court for permission and approval to sell property and/or to spend the children's money for their support or education. The guardian must account for income and disbursements permitted by the Court action if necessary.

Lifetime Planning. Most people recognize the importance of having an estate plan in place to handle the legal problems that arise upon one's death. However, many individuals fail to engage in lifetime planning to deal with the serious legal and management problems that may result from aging, illness or incapacity, including the potential need for long-term care.

CONTACTING THE SOMERSET COUNTY SURROGATE

The principle governing my staff and me is that, during periods of grief and family uncertainty, the Surrogate's Court is available to listen, help and guide. If you have any questions regarding any topic referred to in this booklet or involving the Surrogate's Court, please contact my office.

The Somerset County Surrogate's Court is located on the first floor of the Somerset County Administration Building, 20 Grove Street, Somerville, New Jersey 08876. The office is open for business from 8:30 a.m. to 4:30 p.m. every business day. Feel free to call at (908) 231-7003 or visit us at our web site address:

www.co.somerset.nj.us

We are here to serve you.

GLOSSARY

Administrator: A person appointed by the courts to take charge of the estate of a decedent who dies without a will.

Beneficiary: A person designated to receive money, property or benefits in a will.

Bequest: A gift of personal property by a will.

Bequeath: To dispose of personal property through a will.

Caveat: A formal notice given by someone to prevent the proving of a will or the grant of administration of an estate.

Codicil: An addition or supplement to an original will that adds to or deletes only a part of the will.

Decedent: A deceased person.

Devise: A gift of real estate through a will.

Estate: Property and possessions, everything a person owns.

Executor/Executrix: A person named in a will to carry out the wishes and intentions of the will, also known as a personal representative.

Guardian: A person entrusted by the law with the fiduciary care of a person, such as a minor or mental incompetent, or of their property.

Heir: A person who inherits property from a deceased person.

Intestate: When a person dies without a will.

Legatee: A person who receives a gift under a will.

Personal Property: Intangible property, such as stocks, bonds or bank accounts, and tangible property such as jewelry, furniture and automobiles.

Probate: Official proof of authenticity or validity of a will.

Real Property: Land and/or buildings.

Surrogate: The elected county official who oversees probate in the State of New Jersey.

Tenants in Common: Two or more persons owning individual interests in a single piece of property.

Testator/Testatrix: The person who makes a will.

Trust: Property owned or managed by a person for another.

Trustee: Person holding property in trust for another.

Will: A legal declaration of the manner in which a person wishes his or her estate to be divided after his death.

Witness: Person who observes the signing of a document and attests to the signatures.

DIRECTIONS TO THE SOMERSET COUNTY SURROGATE'S OFFICE

20 Grove Street, Somerville, New Jersey 08876
(908) 231-7003

PARKING NOTICE: There is no charge to park in the Bernie Field Parking Deck. After you have parked, go to the GREEN level to enter the Administration Building and the Surrogate's Office is the last office on your left before you exit the building.

If it is more convenient, there is metered parking available on Grove Street and Main Street that will allow you to enter via the front entrance of the administration building. The Surrogate's Office will be your first office on the right if you enter the Administration building from Grove Street.

FROM THE NORTH

Take Route 287 South to Exit 17, formerly Exit 13 (Route 202-206 South)
Landmark: Pass Bridgewater Commons Mall on left; stay to right when the third lane appears
Turn right onto Route 22 East
Immediately after the 2nd overpass, turn right onto Grove Street (just past Wendy's/Kentucky Fried Chicken)
At the 2nd traffic light, turn left onto East High Street
Entrance to Parking Deck is on the right
Park in the deck (Levels 2-6); Administration Building entrance is via the GREEN (2nd) level of the parking deck.

FROM THE SOUTH (Via Route 287)

Take Route 287 North to Route 22 West
Landmark: Pass Bank of America on the right
Immediately after the 1st overpass, turn right (see sign for Somerville, Grove St. & North Bridge St.)
Bear right, go up over the overpass; this leads to Grove Street
At the 2nd traffic light, turn left onto East High Street
Entrance to Parking Deck is on right

Park in the deck (Levels 2-6); Administration Building entrance is via the GREEN (2nd) level of the parking deck.

FROM THE SOUTH (Via Route 206)

Take Route 206 North
Landmark: On Route 206 North approaching Somerville, look for a low stone wall on left (Duke Gardens)
Shortly past this wall, turn right onto Bridge Street (Somerville)
At 2nd traffic light, turn right onto East Main Street
Make next left onto Grove Street
Make next right onto East High Street
Entrance to Parking Deck is on right
Park in the deck (Levels 2-6); Administration Building entrance is via the GREEN (2nd) level of the parking deck.

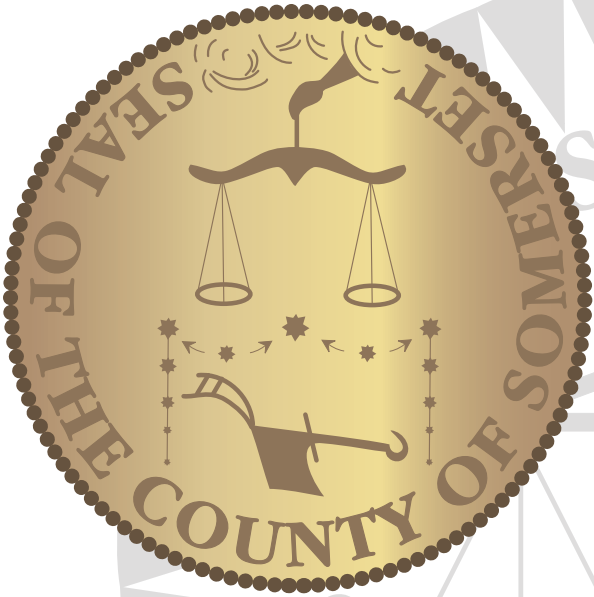
FROM THE EAST:

Take Route 22 West
Go under Route 287 overpass in Bridgewater
Landmark: Pass Bank of America on the right
Immediately after the next overpass, turn right (see sign for Somerville, Grove St. & North Bridge St.)
Bear right, go up over the overpass; this leads to Grove Street
At the 2nd traffic light, turn left onto East High Street
Entrance to Parking Deck is on right
Park in the deck (Levels 2-6); Administration Building entrance is via the GREEN (2nd) level of the parking deck.

FROM THE WEST:

Take Route 22 East into Somerville
Landmark: Pass Ethicon Inc. on left
Immediately after the 2nd overpass, turn right onto Grove Street (just past Wendy's Kentucky Fried Chicken)
At the 2nd traffic light, turn left onto East High Street
Entrance to Parking Deck in on right
Park in the deck (Levels 2-6); Administration Building entrance is via the GREEN (2nd) level of the parking deck.

NOTES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