

E553 November 17, 2010

## 1. GOT KIDS? ESTATE PLANNING IS RECOMMENDED

If you have minor children and do not have a will, one author wrote you are doing them a great disservice bordering on child neglect. If you do not name a guardian for your minor children think of the worst relative you have and that's who will get the kids. Makes you shudder, doesn't it?

We've finished the graduation season and kids have started college. Do you have a recent high school grad? Is your son or daughter over 18 and heading off to college? Did you remember that your child is now an adult and your control over them is limited? For example, if your daughter becomes ill while at school and is admitted to the hospital or student health center, you are NOT legally entitled to know about it-or about her condition; even if you are paying for everything.

So, here's the plan. Have your college son or daughter prepare a HIPAA authorization form. This allows your child to name the parents as the persons to discuss health care matters with medical personnel. Without it, you cannot legally learn anything. It's something that most parents never think about.

It may also be prudent for your child to execute the basic documents listed above, including the Durable Power of Attorney and Advance Directives. Once a child turns 18, your legal connection is irrevocably changed.

## REAL ESTATE

Do you own real estate? How is it titled? Is it a survivorship deed? Have you considered a transfer on death deed? Some states permit those and they work very well. Do you have a second home? Is it outside your home state? What are the laws in that state regarding the inheritance of property?

Schedule an appointment with your attorney.

## 2. Selecting Trustees

One of the more critical decisions you'll make when setting up a trust is selecting a trustee. Depending on the trust's provisions, the trustee can serve for decades, with broad discretion in managing assets and distributing income and principal. The trustee's performance can significantly impact your beneficiaries' distributions. Some thoughts to consider when deciding on a trustee include:

**Decide whether to choose a family member, friend, or professional trustee.** You want an honest individual with some basic financial aptitude. You could decide to name two trustees, perhaps a family

member and a professional. The professional could handle investment decisions, while the family member could oversee those decisions and make distribution decisions. Before naming a trustee, obtain that individual's consent and ensure that the responsibilities are understood.

□

**Don't rule out a professional due to the fees involved.** While friends and family may serve without compensation, consider whether they could handle these financial decisions as well as a professional could. The trustee's duties can be complex and time consuming. You should consider whether a friend or family member has the time and aptitude for the task. □

**Name a successor trustee.** If your trustee dies, becomes incapacitated, or decides he/she doesn't want to serve as trustee, you should have a successor trustee named or at least describe how one should be selected, such as through a majority vote of the beneficiaries.□

**Set up performance guidelines.** That way, if the trustee does not meet those guidelines, your beneficiaries will have a means to change trustees.□

**Write a letter to your trustee explaining your wishes.** This letter should explain your objectives for the trust, information about the beneficiaries, and other factors that will help the trustee make decisions. Source: <http://www.bizactions.com/n.cfm/page/e110/key/150509814G2286J3007507P24P1974T3/>

### **3 Recent cases No Statement Admissible by Non-Appearing Witness. State v. Basil 202 NJ 570 (2010)**

The on-scene identification by a citizen informant and corroborative discovery of the weapon gave officers probable cause to arrest defendant and, therefore, defendant's volunteered statement to police should not have been suppressed as the product of an unlawful arrest. In addition, the members of the Court being equally divided, the judgment of the Appellate Division is affirmed, holding that the non-appearing witness's testimonial hearsay statement was inadmissible under the Sixth Amendment Confrontation Clause. The admission of the statement had the clear capacity to cause an unjust result and was not harmless error beyond a reasonable doubt.

### **4. Recent Cases. Investigatory Stop Permitted where Police had Articulable Suspicion of Drugs. State v. Mann \_\_\_\_ NJ \_\_\_\_ (2010) (A-56-09) 8/4/10**

The trial court fairly concluded that the police had reasonable and articulable suspicion to support an investigatory stop of defendant and that the seizure of drugs from both locations was lawful.

**5. Once impounded, the police were required to obtain a warrant before searching the vehicle. State v Minitee \_\_ NJ Super. \_\_ (App. Div. 2010) A-5002-06T4/A-6213-06T4 8-16-10**

In these back-to-back appeals concerning the warrantless search of a motor vehicle, the court harmonized the seemingly inconsistent holdings in State v. Martin, 87 N.J. 561 (1981) and State v. Pena-Flores, 198 N.J. 6 (2009), by finding that the exigent circumstances that existed at the scene only permitted the police to seize the vehicle. Under our State's Constitution, once impounded, the police were required to obtain a warrant before searching the vehicle.

**6. Fun Upcoming Running Races November/ December Selected by Kenneth Vercammen**

If you are attending any of these races, please call or email Ken V. Often we car pool or meet at these events. I cannot run due to knee injury, but plan on being a volunteer, or walk the course.

11/20 Manasquan Turkey Trot 5-mile Manasquan 11am party at taverns after race discount beer

11/26 Born to Run 5 mile Freehold Friday Free beer at Court Jester tavern 11am

11/27 Rumson hash annual Crazy Eddie memorial trail run, not race 10:17 call for secret location 732-219-0301

11/28 Navesink Challenge 15k and 5k, Middletown, NJ 732-542-6090 Quality JSRC event 10:00 AM Free food and discount beer at Outback

12/4/2010 Poricy Park Trail Run 5k Middletown NJ 732-842-5966

12/5/2010 Jingle Bell Run/Walk for Arthritis 5k run/walk, 10am Metuchen NJ 732-283-4300 x 329

December 11      Saturday,    Big Chill 5k Rutgers    **9:10am New Brunswick NJ 732-445-2398**

12/11    Arthritis 5k    Bar A

12/12/2010    Toys for Tots 5K, 10am Freehold NJ    FARC    732-431-2627

12/26 Polar Bear Races 5k Asbury Park 5mi Run, 1pm, 732-222-9080 Free Polar Plunge swim in Atlantic Ocean after race, then discount beer at Wonder Bar

12/31    Lake Como Bar A group run, not a race    free beer

1/1/2011 New Years Day **Hangover Run 5k** 12 noon    CJRR Westfield  
**1/1/2011    732-236-7651**

Jan 2, 2010    Freehold Winter 5k    10:00am FARC

Jan. 8, 2011 Freezing Cold Hash run, Edison, NJ -Start Ken Vercammen Law Office, 2053 Woodbridge Ave, Edison 732-572-0500 Adventure trail run, not a formal race. Featured on TV News12 NJ and Cablevision.    Free beer, open bar 7:30-11:30

7. Ken's knee rehab ..... I started physical therapy following my knee surgery at St. Peters Physical Therapy. I can now walk without crutches using a cane, bicycle stationary & outside and swim. I hope to walk portions of the above races, then volunteer the finish line. I hope to start easy jogging sometime in 2011.

Special thanks to my office computer expert Ben Haws who drove me to courts for two months while I could not drive. Thank you also to my dad Al

Vercammen who also drove me to courts and helped me get to doctor's appointments.

8. Our New email.... We have upgraded our computer systems and internet.

We have selected Optimum Online to replace the slow Verizon DSL.

Our office new office email is [VercammenLaw@Njlaws.com](mailto:VercammenLaw@Njlaws.com).

Please don't email anything to [kenvnlaws@verizon.net](mailto:kenvnlaws@verizon.net), that account is disconnected. Thank you to our Webmaster Sheereen who returned in November to revise many of our website articles