

ESTATE PLANNING FOR GAY AND LESBIAN COUPLES WHO HAVE NOT ENTERED INTO A CIVIL UNION OR REGISTERED AS DOMESTIC PARTNERS

"SAVE MONEY AND PROVIDE FOR YOUR LOVED ONES "

By Kenneth A. Vercammen

As average Americans, we work 80,000 hours in a lifetime, or 45 to 55 years. In spite of all the resources and assets we earn, the vast majority of Americans with assets do not take the time to create a Will.

National statistics indicate that 80% of Americans die without leaving a Will. There are several reasons for this: fear of death; procrastination; and misinformation (people presume that only the rich or married with children need to have Wills). Whatever the excuse, it is clear that people would benefit from having a Will.

In the absence of a Will or other legal arrangement to distribute property at death, your partner cannot receive any assets and cannot administer your estate. The result can be lengthy delays and other problems. Individuals in gay or lesbian relationships need properly drafted Wills and estate planning documents more than straight persons. The probate laws generally provide if a person dies without a Will, their property goes to family, rather than a partner they had a relationship with for years or decades.

IF YOU HAVE NO WILL:

If you leave no Will or your Will is declared invalid because it was improperly prepared or is not admissible to probate:

- * State law determines who gets assets, not you
- * Additional expenses will be incurred and extra work will be required to qualify an administrator
- * Possible additional State inheritance taxes and Federal estate taxes
- * If you have no s Civil Union , spouse, or close relatives the State may take your property
- * The procedure to distribute assets becomes more complicated-and the law makes no exceptions for persons in unusual need or for your own wishes.
- * It may also cause fights and lawsuits between your partner and your

family

When your loved ones are grieving and dealing with death, they shouldn't be overwhelmed with disputes over property and Financial concerns. Careful estate planning helps take care of that.

THE FOLLOWING IS A SAMPLE OF A VARIETY OF CLAUSES AND ITEMS WHICH SHOULD BE INCLUDED IN A WILL FOR UNMARRIED PERSON:

1ST: DEBTS AND TAXES

2ND: SPECIFIC BEQUESTS TO PARTNER, CHARITY, ETC

3RD: DISPOSITION TO PARTNER

4TH: DISPOSITION OF REMAINDER OF ESTATE IF PARTNER IS PREDECEASED

5TH: CREATION OF TRUSTS FOR PARTNER

6TH: DISTRIBUTION TO CHILDREN OR TRUST FOR CHILDREN

7TH: OTHER BENEFICIARIES UNDER 21

8TH: EXECUTORS

9TH: TRUSTEES

10TH: GUARDIANS OF CHILDREN

11TH: NO SURETY OR BOND REQUIRED

12TH: POWERS

13TH: SELF PROVING WILL

14TH: PRINCIPAL AND INCOME

15TH: NO ASSIGNMENT OF BEQUESTS

16TH: GENDER

17TH: CONSTRUCTION OF WILL

18TH: NO CONTEST CLAUSE

A Will must not only be prepared within the legal requirements of the New Jersey Statutes but should also be prepared so it leaves no questions regarding your intentions.

WHY PERIODIC REVIEW IS ESSENTIAL

Even if you have an existing Will, there are many events that occur which may necessitate changes in your Will. Some of these are:

* Domestic Partnership, Marriage, death, birth, divorce or separation affecting people named in your Will

*Significant changes in the value of your total assets or in any

particular assets which you own

* Changes in your relationships

* A change in your State domicile

* Death or incapacity of a beneficiary, or death, incapacity or change in residence of a named executor, or of one of the witnesses to the execution of the Will if the Will is not self-proving

* Annual changes in tax law

MAY I CHANGE MY WILL?

Yes. A Will may be modified, added to, or entirely changed at any time before your death provided you are mentally and physically competent and desire to change your Will. You should consider revising your Will whenever there are changes in the size of your estate.

Beware, if you draw lines through items, erase or write over, or add notations to the original Will, it can be destroyed as a legal document. Either a new Will should be legally prepared by an attorney or a Codicil prepared by an attorney signed to legally change portions of the Will.

SAVE MONEY

Probate in New Jersey is not difficult. Your estate will be subject to probate whether or not you have a Will and in most cases, a Will reduces the cost by eliminating the requirements of a bond. When you meet with your attorney to draft a Will, you may also learn ideas to reduce death taxes and other expenses. Don't pinch pennies now to the detriment of your Partner and beneficiaries. We have attempted to briefly explain in this article some of the issues, techniques, and decisions involved in Wills, Estate Planning, and Administration of an Estate. Because the matters covered are complicated and the Federal and New Jersey laws frequently change, this article can only outline some of the many legal issues you should consider.

The cost of a Will depends on the size and the complexity of the

estate and the plans of the person who makes the Will.

A properly drawn Simple Will without Trust costs approximately \$300.00 to \$600.00. It is one of the most important documents you will ever sign, and may be one of the best bargains you will ever have.

Also, ascertain if your Will is “self-proving”, which would dispense with having to find the Will’s witnesses after death.

WHAT IS A WILL?

“A Will is a Legal written document which, after your death, directs how your individually owned property will be distributed, who will be in charge of your property until it is distributed. You should remember that the term “property” under the law includes “real estate as well as other possessions and rights to receive money or items of value.” Everyone who has at least \$3,000 in assets should have a Will. You do not have to be wealthy, married, or near death to do some serious thinking about your Will.

ADMINISTRATION OF AN ESTATE

If you are named the executor or executrix, you must visit the County Surrogate to probate the Will. You will need the following items:

1. The Death Certificate
2. The Original Will
3. Names and Addresses of decedent's next of kin and will beneficiaries
4. Minimum of \$100.00 for Surrogate fees

A state inheritance tax return must be filed and the tax paid on the transfer of real or personal property within eight months after death.

OTHER ITEMS OF CONCERN TO BE PREPARED BY YOUR ATTORNEY

-Power of Attorney- to allow your partner or another person to administer your assets during your lifetime, either upon disability or now

-Living Wills/ Advance Directive- to state your wishes concerning medical care in the event of your serious illness and to allow your

partner or another person to make medical decisions.

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