

E349 9/15/2010

1. Benefits and Pitfalls of Pre-nup Agreements by Angela Barker, Esq.

RECENT CASES:

2. Protective Sweep of Area by Police Sometimes Permitted on Private Property.

**3. A Review of Your Estate Plan is Essential After Divorce
By Angela Barker, Esq.**

4. End Of The Running & Exercise Streak

5. Next Events
1. Benefits and Pitfalls of Pre-nup Agreements

By Angela Barker, Esq.

In New York and New Jersey prenuptial agreements (agreements entered into by couples prior to marriage) are valid and enforceable agreements. A prenuptial ("prenup") agreement, once it is prepared and executed in the proper manner, and it reflects the intention of the parties, is very often viewed as any other contract is viewed and in the absence of any evidence of undue influence or very exceptional circumstances it would be the terms of the prenup that governs the

division of assets and other financial issues upon divorce.

Very often a person (very often the one with the least assets) will telephone my office and state "We need a prenup. Can my fiancée and I come to your office and you draft it for us?" Other times they would say, "I got your number I just want you to look at my prenup because my fiancée's lawyer told me I had to have a lawyer but don't make a big deal of it. I am sure its fine, I just want to sign it." Usually, the prenup is not "fine." It is often extremely one-sided and would have you give away a lot of rights that are afforded to you under the family law statutes of your state. In addition, the same attorney should never represent both parties to a prenup agreement. Each side must have their own counsel to ensure that negotiations are fair and both parties' interests are protected.

In every pre-nup negotiation there must be full financial disclosure. In addition, you must pick an attorney of your own choosing. Most importantly, you must listen to your attorney and if he/she tells you the document is one-sided try to negotiate a better agreement. You will not be released from your rights and obligations if you knowingly sign a one-sided prenup. □□It is important that you understand the terms of a prenup and that you fully comprehend the impact of those terms in the event, however unlikely, of a divorce. For example, waiving alimony or maintenance may mean that after years of being a stay-at-home parent, or the one reducing your career opportunities for the sake of your family, you may not have sufficient resources to get back on your feet post-divorce.

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2. Recent cases:

Protective sweep of area by police sometimes permitted on private property

State v. Davila _____ NJ _____ (2010) (A-20-09) 7/14/10

A protective sweep conducted on private property is not per se invalid merely because it does not occur incident to an arrest. Law enforcement officers may conduct a protective sweep only when (1) the officers are lawfully within private premises for a legitimate purpose, which may include consent to enter; and (2) the officers on the scene have a reasonable articulable suspicion that the area to be swept harbors an individual posing a danger. The sweep will be upheld only if it is (1) conducted quickly, and (2) restricted to areas where the person posing a danger could hide.

When an arrest is not the basis for entry, the police must be able to point to dangerous circumstances that developed once the officers were at the scene

3. A Review of Your Estate Plan is Essential After Divorce

By Angela Barker, Esq.

The recent news report regarding deceased actor Gary Coleman is illustrative of the fact that you should review your estate plan after divorce. As I have repeatedly stated, an estate plan is not something you do once, then hide it away in a drawer. Rather it should be reviewed at least every three years and after major life changing events such as births, deaths and divorce.

In Mr. Coleman's case it was learned that he and wife Shannon Price were divorced in August 2008. However, the parties still lived together. It appears that Mr. Coleman granted Ms. Price authority to make medical decisions on his behalf. It was not clear whether that grant of authority was given prior to the divorce or at the time Mr. Coleman was admitted to the hospital for the injury which caused his death. □□ If it were the latter there is no cause for concern. The newspapers reported that Mr. Coleman was lucid and presumably able to give informed consent for the directive. However, if the consent was given prior to the divorce, it is not clear that, post-divorce, Mr. Coleman would have wanted his ex-wife to make any decisions, especially health care decisions on his behalf. □□ In many jurisdictions, estate planning documents such as power-of-attorney, wills, trust, health care proxies, designation of remains directives, and living wills are given literal interpretation and very often a subsequent divorce may

not cut off the rights of former spouse named in these documents. Very often ex-spouses inherit assets that the deceased would surely have wanted to go to others. It is essential that upon your divorce you review your estate plan to ensure that these documents reflect your current desires and goals.

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