

This is our 300th issue of the NJ Laws email newsletter! We started in Spring, 1999. I look forward to continuing to provide updates in law and providing advise to friends and clients.

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1. **Where there's No Will.....there is No Way....**

If you do not write a Will, the State has already written one for you. Your assets go to whoever a state law says receives the assets, or to the government itself! A Will should be a testimony to the things you truly care about: your spouse, your children, your parents, your friends, your Church and charities. You can consider remembering your church or school.

If You Have No Will:

Compiled By Kenneth Vercammen, Esq.

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-Surety Bond, additional costs and legal fees
- * Judge determines who gets custody of your children
- * Possible additional State inheritance taxes and Federal estate taxes
- * If you have no spouse or close relatives the State may take your property
- * The procedure to distribute assets becomes more complicated
- * It may also cause fights and lawsuits within your family

When loved ones are grieving and dealing with death, they shouldn't be overwhelmed with Financial concerns.

Think- Who don't you want to receive your assets? Without a Will, they could receive your assets and request custody of children.

Who is not the best choice to raise your children, or safeguard your children's money for college? Do you want children, or grandchildren, to get money when they turn 18? Will they invest money wisely, or go to Seaside and play games?

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:

- * Marriage, death, birth, divorce or separation affecting either you or anyone named in your Will
- * Significant changes in the value of your total assets or in any particular assets which you own
- * A change in your domicile
- * Death or incapacity of a beneficiary, or death, incapacity or change in residence of a named executor, trustee or guardian of infants, or of one of the witnesses to the execution of the Will
- * Annual changes in tax law
- * Changes in who you like

MAY I CHANGE MY CURRENT 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. For example, when your children are young, you may think it best to have a trust for them so they do not come into absolute ownership of property until they are mature. 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 or a codicil signed to legally change portions of the Will.

A portion of your Will and Estate Planning can be deducted on your income tax return when it deals with tax planning. Thus, part of the fee is tax deductible for income

tax purposes.

Call prior to April 2 for a confidential consultation on Estate Planning prior to April 15 tax day. We help clients avoid probate problems and efficiently transfer assets to beneficiaries. We also help senior citizens to organize their estates to achieve a secure retirement.

2. Child Support continues after age 21 unless formal Motion filed to terminate child support

Child support is usually determined through a formal court order. Child support orders, wage withholding, and other Court Orders usually continue forever until a Superior Court Judge signs a Formal Court Order modifying the prior Order. For example, in child support issues, even if a divorce decree states support ends when the child ends full time school, child support does not automatically end. A new Motion must be filed in the Superior Court. It is not sufficient for you to simply wait for a child to finish school. Motions are required to terminate alimony or change any prior court order or divorce decree. Many Divorce decrees and Property Settlement Agreements state that child support will end upon emancipation. For example, the term "emancipation" is sometimes defined as follows: (i) The completion of the child's formal education on a matriculated basis, whether it be graduation from a four year undergraduate school or high school, it being understood that so long as the child is diligently pursuing his formal education through a four year undergraduate college education and obtaining passing grades the child shall not be considered emancipated. (ii) Upon the completion of any of the aforesaid segments of the child's education, and upon the failure to commence the next segment of his education, or upon leaving school, the child shall be deemed emancipated unless failure to continue on with his education has resulted from injury or illness or some other cause beyond the child's control. (iii) The marriage of the child. (iv) Entry into the military or armed forces by the child.

Your attorney can draft the appropriate Motion to terminate child support if the child is emancipated. You will need to provide your attorney with relevant papers including a copy of the Final Judgment for Divorce, any other Child Support Orders, copy of birth certificate if available, proof of graduation from school or working full time, etc. Sometimes the child support recipient, usually the mother, will sign a Consent Order which your attorney can file without the need for a detailed hearing. However, generally a Formal written Notice of Motion must be filed in the County Superior Court where the child support Order was entered. The requirements of the Motion are detailed and must include the correct filing fees. Child support does not end merely if the child reaches 18 and graduates high school. Most child support Orders continue child support if the child is in college full time. However, don't give up. In the unreported Appellate Division decision of *Kozak v Kozak* ___ NJ Super. ___ (App. Div. decided January 9, 2003) the court reduced child support during the period of time the child resided at the college campus. The judge determined it was appropriate to calculate child support only for the period of time the child was not residing at college.

Many motions to terminate child support are filed in June when if it becomes clear an 18 year old child is not going to attend college.

More information at <http://www.njlaws.com/motions-in-child-support.htm>.

3. Police could stop car based on call by daughter that father was drunk **State v. Amelio** 197 NJ 207 (2008)

Based on the report to dispatch by defendant's seventeen-year-old daughter, who identified herself, reported that her father was driving drunk, described the vehicle, and exposed herself to criminal prosecution if her report was knowingly false, there was reasonable and articulable suspicion of an offense to support a constitutional motor vehicle stop by the police.

On YouTube: http://www.youtube.com/watch?v=cYZlFr2_qo

4. Summons Must Contain Specific Statute Charged. State v. Thulin (App. Div. 2008) A-1691-07T4 Unpublished.

Conviction following a trial *de novo* for refusal to submit to a Breathalyzer test reversed; one of the six summonses issued to the defendant following a single-vehicle accident described the offense as "refusal to submit to blood" and cited the implied-consent statute, N.J.S.A. 39:4-50.2; however, no summons was issued for failure to submit to a Breathalyzer test; relying on the State Trooper's testimony that he had read the "New Jersey Motor Vehicle Commission Standard Statement for Operators of a Motor Vehicle" to the defendant as required by N.J.S.A. 39:4-50.2(e), the Law Division found the defendant guilty of violating N.J.S.A. 39:4-50.4a; however, the Appellate Division agreed with the defendant that his conviction had to be reversed because the failure to accurately state the charge against which he had to defend violated due process.

Source: NJ Lawyer Daily Briefing November 7, 2008

5. Harassment Requires Purpose to Harass. State v. Otto (App. Div. 2008) A-2502-07T4 Unpublished.

Conviction following a trial *de novo* of the petty disorderly persons offense of harassment affirmed; the defendant police officer was the subject of an internal investigation that led to his discharge; a female sergeant who had participated in the investigation told the defendant that he was being discharged, and she escorted him to his office to gather his belongings; the defendant first stopped at his car, where he retrieved a bottle of green liquid; while cleaning out his desk, the defendant sprinkled green liquid out of the bottle onto one of the sergeant's feet; the sergeant, who was wearing open-toed sandals, began to feel a "burning" or "tingling" sensation, and she washed her foot, told the defendant that she was going to press charges, and took the bottle of green liquid as evidence; the defendant lunged at the sergeant, who backed away from him until she was up against a wall; the Appellate Division rejected the defendant's argument that the State had failed to establish under N.J.S.A. 2C:33-4 the necessary element of purpose to harass and that his only purpose was to retrieve the bottle and not to intimidate or harass the sergeant.

Source: NJ Lawyer Daily Briefing – October 23, 2008

6. Reminder Upcoming events, car pools and networking

3/28/09 Rat Race 5mile 10:00 Neptune/Wall plenty of free beer

March 30 NJ State Bar Mun Ct Section Speaker- Hon. Spencer Robbins NJ Law Center

Monday, March 30, 2009 WILLS, PROBATE AND ELDER LAW- Adult and Community Education

WHEN: 7 – 8:30P.M.

East Brunswick Adult & Community Education Program

4/18/2009 Jersey Shore Relay For Special Olympics 5,4,3,2,1 teams 26 miles, 9am From Seaside Hts To Asbury Park 732-681-9464 free beer! If you cant run, you can volunteer or pay to go to party

[If your are attending one of these events, please email us. Sometimes our groups car pool to events and network]