

Wills and Estate Planning for AFL-CIO Members

By Kenneth Vercammen, Esq.

As average Americans, we work 80,000 hours in a lifetime, or 45 to 55 years. In spite of all our resources and the assets we earn during our lifetime, the vast majority of Americans do not take the time to create the legal instructions to guide the court or a guardian. National statistics indicate that more than 50% of Americans die without leaving a will. In the absence of a Will or other legal arrangement to distribute property at death, the State may step in to administer the estate and decide who gets custody of your children and handle their money. This process is called the law of intestacy. The result can be lengthy delays in the distribution of your estate, court battles between relatives and your children being raised by someone you do not favor.

Where there's No Will ...

Your assets go to whoever a state law says receives the assets, or to the government itself! A Will should be a statement to the things you truly care about: your spouse, your children, your parents, your friends, and your charities.

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

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1. People you dislike or people who dislike and ignore you may get your assets.
2. State law determines who gets assets, not you
3. Additional expenses will be incurred and extra work will be required to qualify an administrator-Surety Bond, additional costs and legal fees
4. You lose the opportunity to try to reduce Estate Tax, State inheritance taxes and Federal estate taxes
5. A Judge determines who gets custody of children. A greedy brother or crazy mother in law could ask the court for custody.
6. If you have no spouse or close relatives the State may take your property
7. The procedure to distribute assets becomes more complicated

8. It probably will cause fights and lawsuits within your family

When loved ones are grieving and dealing with death, they shouldn't be overwhelmed with Financial concerns. A Will must not only be prepared within the legal requirements of the state Statutes but should also be prepared so it leaves no questions regarding your intentions.

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?

Life Insurance

Sometimes it is not wise to leave children as a beneficiary of life insurance and your pension if your children are under the age of 21. You could make your estate the beneficiary of life insurance, and pension, then direct in your Will that the money be used to provide support and college expense for children.

For example, the Will could provide that any portion of my residuary estate which becomes distributable to a beneficiary under the age of twenty-one (21) years shall be held as a separate trust by my Executor until such beneficiary attains the age of twenty-one (21) years. My Executor shall apply such amounts of income and principal as he, in his sole discretion, deems proper for the health, maintenance, education, welfare, or support of such beneficiary and shall accumulate any unexpended income not needed for the above purposes, paying and transferring the portion held in trust to the beneficiary upon his or her attaining the age of twenty-one (21) years. Prior to his or her attaining the age of twenty-one (21) years, my Executor may apply such income or principal for benefit of such beneficiary directly or by payment to the person with whom such beneficiary resides or who has the care or control of such beneficiary without the intervention of a guardian. My Executor shall not be obligated to supervise or inquire into the application of such amounts by such person, and the receipt of such person shall be a complete release of my Trustee.

THE FOLLOWING IS A SAMPLE OF A VARIETY OF CLAUSES AND ITEMS WHICH KENNETH VERCAMMEN'S LAW OFFICE OFTEN INCLUDES IN A WILL

- 1ST: DEBTS AND TAXES
- 2ND: SPECIFIC BEQUESTS
- 3RD: DISPOSITION TO SPOUSE
- 4TH: DISPOSITION OF REMAINDER OF ESTATE
- 5TH: CREATION OF TRUSTS FOR SPOUSE
- 6TH: CREATION OF TRUST FOR CHILDREN
- 7TH: OTHER BENEFICIARIES UNDER 21
- 8TH: EXECUTORS
- 9TH: TRUSTEES
- 10TH: GUARDIANS
- 11TH: SURETY OR BOND
- 12TH: POWERS
- 13TH: AFTERBORN CHILDREN
- 14TH: PRINCIPAL AND INCOME
- 15TH: NO ASSIGNMENT OF BEQUESTS
- 16TH: GENDER
- 17TH: CONSTRUCTION OF WILL
- 18TH: NO CONTEST CLAUSE

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.

Under the law in New Jersey, if a person dies without a Will and without children, their spouse will inherit all assets, even if they are separated from the spouse. In addition, if you have children from a previous marriage, but no Will, your separated spouse will get half your estate. Therefore, you may wish to do the following:

- 1) Have an Elder Law attorney prepare a Will to distribute your assets to the people you care the most about. If you already have a Will, prepare a new Will and have the old Will revoked. (Your estate planning attorney will explain this to you.)
- 2) Prepare a Power of Attorney to select someone to handle your finances if you become disabled. Have your old power of attorney revoked.
- 3) Prepare a Living Will prepared
- 4) Change your beneficiary on assets you may own, such as stocks, bank accounts, IRA, and other financial assets. Change your beneficiary under your own life insurance, whether whole life insurance or term insurance.
- 5) Contact your human resources person and change the beneficiary on life insurance, pension, stock options or other employee benefits. Note that your spouse must sign a written waiver permitting you to change beneficiaries.
- 6) Keep your personal papers at a location where family can find them.
- 7) Have your attorney prepare a prenuptial agreement if you decide to get re-married.
- 8) Make sure the trustee for any funds designated for your children is the "right" trustee.
- 9) In New Jersey, if you are married and living with your spouse, under certain instances the surviving spouse has a right to "elect against the Will" The disinherited spouse may like to elect against the Will and try to obtain one third of the estate. Your attorney can explain how you can protect yourself and your children.

10) If you have minor children, nominate someone under a Will to serve as guardian to the children. Although the surviving parent obviously has first right of custody of children, they may not even want custody.

SAVE MONEY- Have your attorney prepare a self- proving Will with a No bond clause

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. With a well-drawn Will, you may also reduce death taxes and other expenses. Don't pinch pennies now to the detriment of your beneficiaries

The proper preparation of a Will should involve a careful analysis of the your assets, family and desires.

Estate Planning is the process of examining what will happen to your property when you die and arranging for its distribution in such a manner as will accomplish your objectives.

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.

Be sure your Will takes into account the 2010 Federal Tax changes and any Inheritance Tax changes. Also, ascertain if your Will is "self-proving", which would dispense with having to find the Will's witnesses after death.

OTHER DOCUMENTS TO BE PREPARED BY YOUR ATTORNEY

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

-Living Wills- to state your wishes concerning medical care in the event of your serious illness

-Trusts (and Medicaid Trusts)

CONCLUSION

Planning can only be done if someone is competent and/or alive. Make sure your assets can be passed directly to your loved ones. Kenneth A. Vercammen is a Middlesex County trial attorney who has published 125 articles in national and New Jersey publications on litigation topics. He has been selected to lecture to trial lawyers by the American Bar Association, New Jersey State Bar Association and Middlesex County Bar Association.

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