

**NJ LAWS EMAIL
NEWLETTER E434
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January 22, 2014 □ □ **Dear Ken, □ □ 2014 update
Wills and Estate Planning Seminar materials**

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Planning Seminar materials**

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1. Federal Estate Tax exemption now permanently increased so no tax for Estates under \$5,340,000, and will be adjusted annually for inflation. However, New Jersey taxes estates over \$675,000.

2. Gifts permitted without Federal Estate & Gift tax was increased to \$14,000 per person.

3. We recommend Self- Proving Wills since

witnesses often move or pass away

4. Non-formal writings could be Wills under the New Probate Law

5. Undue influence: Recent cases can void Will signed under suspicious circumstances

6. NJ Inheritance tax

7. Power of Attorney

8. Federal Health Privacy Law (HIPAA)

9. Competency required to sign a Will or Power of Attorney

1. Federal Estate Tax exemption is now permanently increased so no tax for Estates under \$5,340,000, and will be adjusted annually for inflation. However, New Jersey taxes estates over \$675,000.

Federal Exemption Amount for Non-Citizen Spouses is \$145K up from \$143K.

New Jersey has an Estate Tax on amounts over \$675,000. So, even if no Federal Estate Tax due, the estate must still file a Federal Estate Tax Return, plus NJ Estate Tax Return.

So, for an unmarried or widowed person with assets of \$1,000,000, there is No Federal

Estate Taxes, but the Estimated State Estate Tax: \$33,200.00 For an unmarried or widowed person with assets of \$1,500,000, estimated NJ Estate Tax is over \$60,000. The Federal Tax rate on estates over \$5,340,000 has been increased from 35% to 40%.

How to avoid NJ Estate Tax- hire an attorney to set up a personal residence trust or irrevocable trust and have the assets taken out of your name and put into a trust or given to children and grandchildren in the trust. Minimum fees for trust are \$3,000. This is probably not something a non-attorney can do on their own. It is illegal for a non-attorney to provide legal advice or prepare most legal documents.

2. Gifts permitted without Federal Estate & Gift tax was increased to \$14,000 per person.

However, the amount permitted for Medicaid transfers is zero.

3. We recommend Self- Proving Wills since witnesses often move or pass away

An old New Jersey Probate law required one of the two witnesses to a Will to travel and appear

in the Surrogate's office and sign an affidavit to certify they were a witness. This often created problems when the witness was deceased, moved away, or simply could not be located. Some witnesses would require a \$500 fee to simply sign a surrogate paper. My Grandmother's Will was not self-proving, and the witness to Will extorted a \$500 fee.

The New Jersey Legislature later passed a law to create a type of Will called a "Self-Proving Will." In such a Will, the person for whom the Will is made must sign. Then two witnesses sign. Then the attorney or notary must sign; with certain statutory language to indicate the Will is self-proving. Beware of online documents not prepared by an attorney

When done properly, the executor does not have to locate any witnesses. This usually saves time and money. If your Will is not "self-proving" or if you are unsure, schedule an appointment with an elder law attorney. Some law offices ignore the revised law, and fail to prepare self-proving Wills. Do not use a law office that follows old methods and does not do a self-proving Will.

4. NJ SENATE Law No. 708 made a number of substantial changes to the NJ Probate Law.

Non-formal writings could be Wills under the Revised provisions governing the administration of estates and trusts in New Jersey. So make sure you have a Formal Will drafted by an estate attorney.

The law expanded situations where writings that are intended as Wills would be allowed, but requires that the burden of proof on the proponent would be by clear and convincing evidence. Possibly a Christmas card with handwritten notes could be presented as a Will or Codicil.

To present a non-formal Will or writing requires an expensive Complaint and Order to Show Cause to be filed in the Superior Court, and a hearing in front of a Superior Court Judge.

Be careful; have a Will done properly by an experienced attorney.

Beware of the "Elective share" rights of a new spouse. Have a Prenuptial Agreement if entering into a 2nd marriage

The elective share provisions of the present Code has still not been changed yet. Currently, the

new spouse who is not given money in a Will can challenge the terms of the Will. This is called "electing against the Will by a spouse". A spouse could receive up to 1/3 of the estate, even if only married for 2 weeks. The spouse must file a Caveat or lawsuit in Superior Court. We suggest a formal prenuptial agreement in 2nd marriage situations.

A Testator now means both male and female individuals, removing the term "Testatrix". Will forms that say executrix should not be used.

The law provides a statute of limitations with respect to creditor claims against a decedent's estate. There is no longer a need to publish a Notice Limiting Creditors.

5. NJ Supreme Court has held a Will could be void if signed under suspicious circumstances

When there is a confidential relationship coupled with suspicious circumstances, undue influence is presumed and the burden of proof shifts to the Will proponent to overcome the presumption.

If there is undue influence in making of Will and transfer by Deed of a house by persons in Confidential relationship, this could subject those

persons to punitive damages in some instances, plus voiding of the Will. In the Matter of the Estate of Madeleine Stockdale, Deceased 196 NJ 275 (2008)

A grievance based upon undue influence may be sustained by showing that the beneficiary had a confidential relationship with the party who established the account. See Estate of DeFrank, ___ N.J. Super.

Accordingly, if the challenger can prove by a preponderance of the evidence that the survivor had a confidential relationship with the donor who established the account, there is a presumption of undue influence, which the surviving donee must rebut by clear and convincing evidence.

[Estate of Ostlund v. Ostlund, 391 N.J. Super. 390, 401 (App. Div. 2007).]

Although perhaps difficult to define, the concept "encompasses all relationships 'whether legal, natural or conventional in their origin, in which confidence is naturally inspired, or, in fact, reasonably exists.'" Pascale v. Pascale, 113 N.J. 20, 34 (1988) (internal citation omitted). "And

while family ties alone may not qualify, parent-child relationships have been found to be among the most typical of confidential relationships." DeFrank, supra, slip op. at 13 (citing Ostlund, supra, 391 N.J. Super. at 401).

In the context of inter vivos gifts, "a presumption of undue influence arises when the contestant proves that the donee dominated the will of the donor or when a confidential relationship exists between the donor and donee." Pascale, supra, 113 N.J. at 30 (internal citations omitted). "Where parties enjoy a relationship in which confidence is naturally inspired or reasonably exists, the person who has gained an advantage due to that confidence has the burden of proving that no undue influence was used to gain that advantage," In re Estate of Penna, 322 N.J. Super. 417, 423 (App. Div. 1999), and "the donee has the burden of showing by clear and convincing evidence not only that 'no deception was practiced therein, no undue influence used, and that all was fair, open and voluntary, but that it was well understood.'" In re Estate of Mosery, 349 N.J. Super. 515, 522-23 (App. Div. 2002) (citing In re Dodge, 50 N.J. 192, 227 (1967)).

The person receiving gifts and greater benefit had a burden to show no deception was practiced and that all of the transactions were fair, open and voluntary, and that they were well understood.

Wills should be prepared without undue influence. No one other than the person who is signing the Will should be in the room. We usually request the person who wants the Will to fill out the interview form themselves.

6. NJ Inheritance tax

The NJ Inheritance Tax Return instructions and NJ Estate Tax Forms were revised. Don't use old forms. Even if no inheritance tax due, a Tax Waiver on a house must still be obtained and filed if the house was not co-owned by the spouse.

7. Power of Attorney -Do not use a form purchased online. A Power of Attorney should contain reference to the NJ statute requiring banks to honor the Power of Attorney. Section 2 of P.L. 1991, c. 95 (c. 46:2B-11).

8. Federal Health Privacy Law (HIPAA) Have

a New Living Will Signed.

The federal regulation known as the Health Insurance Portability and Accountability Act (HIPAA) was adopted regarding disclosure of individually identifiable health information. This necessitated the addition of a special release and consent authority to all healthcare providers before medical information will be released to agents and interested persons of the patients.

The effects of HIPAA are far reaching, and can render previously executed estate planning documents useless, without properly executed amendments, specifically addressing these issues.

Any previously executed Powers of Attorney, Living Wills, Revocable Living Trusts, and certainly all Medical Directives now require HIPAA amendments.

Powers of attorneys and Living Wills should be updated to reference this new law. More information on the HIPAA law at <http://www.njlaws.com/hipaa.htm>

After you sign the Living Will in your attorney's office, provide a copy to your doctor and family.

9. Competency required to sign a Will or

Power of Attorney

My law office cannot prepare a Power of Attorney, Will or any other legal document unless a person is mentally competent. If someone is unable to come into our office, we require the client or client's family to have the treating Doctor sign the **"Doctor Certification of Patient Capacity to Sign Legal Documents"** It is the client or client's family's responsibility to contact the doctor, obtain the signed Certification at the clients' expense, and then provide the law office with the original signed Certification. The law office cannot accept phone calls stating someone is competent. Therefore, it is wise do have your documents drafted while you can drive and are healthy.