

NJ LAWS EMAIL NEWSLETTER

E478

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1. Danger if No Will or your Will is not properly done

Compiled by Kenneth 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 us do not take the time to create a Will.

National statistics indicate that 80% of Americans foolishly die without leaving a Will. There are several reasons for this: fear of death; procrastination; and misinformation (people presume that only the rich 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, problems arise. The result can be lengthy delays before the rightful heirs receive their property.

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
- * Judge determines who gets custody of your children
- * Possible additional State inheritance taxes and Federal estate taxes cannot be reduced
- * If you have no 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 usually cause fights and sometimes lawsuits within your family

When loved ones are grieving and dealing with death, they

shouldn't be overwhelmed with Financial concerns. Careful estate planning helps take care of that. Don't try to do Estate Planning with a cheap form found online.

THE FOLLOWING IS A SAMPLE OF A VARIETY OF CLAUSES AND ITEMS WHICH YOUR ATTORNEY MAY INCLUDE 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

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 laws

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. 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.

Save money with proper planning

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 an analysis of the client's assets, family and his/her 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. A properly drawn Simple Will without Trust costs approximately \$200.00 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.

Be sure your Will takes into account the Federal Tax changes and New Jersey Inheritance Tax changes. 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 and who will take care of your minor children if the other parent should die ". 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.

2. Recent case Accident with unconscious driver was exigency for police to take blood. State v. Jones ____NJ Super. ____ (App. Div. 2015) A-0793-13T1

In Missouri v. McNeely, 133 S. Ct. 1552 (2013), the United States Supreme Court considered whether "the natural metabolization of alcohol in the bloodstream presents a per se exigency that justifies an exception to the Fourth Amendment's warrant requirement for nonconsensual blood testing in all drunk-driving cases." *Id.* 133 S. Ct. at 1556, (emphasis added). Concluding that fact alone did not present a "per se exigency," the Supreme Court held, "consistent with general Fourth Amendment principles, that exigency in this context must be determined case by case based on the totality of the circumstances." *Ibid.* This matter was summarily remanded to the court by the Supreme Court for reconsideration in light of the Court's decision in State v. Adkins, ____ N.J. ____ (2015), holding that the totality of the circumstances analysis described in *McNeely* should be given pipeline retroactivity.

In the earlier decision, the court reviewed the United States Supreme Court's analysis in *McNeely* and discussion of its holding in Schmerber v. California, 384 U.S. 757, 86 S. Ct. 1826, 1836 (1966). The court concluded "the application of *McNeely* to the facts of this case" did not warrant the suppression of the blood test results. *Jones*, *supra*, 437 N.J. Super. at 75-78.

This was not a routine DWI case in which the dissipation of

blood alcohol was the sole basis for determining an exigency existed. To the contrary, defendant caused a multiple vehicle accident at a busy intersection and crashed into a building, raising concern the building would collapse. Numerous police, firefighters and emergency medical services personnel responded to the scene, where the investigation took hours. It took one-half hour to extricate defendant, who was unconscious, from her badly damaged vehicle. Both she and a passenger in another car had to be transported to the hospital.

Viewing the totality of the circumstances, the court is satisfied that an objective exigency existed and that the officer "might reasonably have believed that he was confronted with an emergency, in which the delay necessary to obtain a warrant, under the circumstances, threatened 'the destruction of evidence[.]'" *Schmerber, supra*, 86 S. Ct. at 1835. The court finds no reason to disturb our prior decision reversing the order that suppressed the results of the blood sample analysis.

3. Next free community seminars

October 12, 2015 North Edison Library Wills, Estate Planning & Probate Seminar at 7pm

10/10 Metuchen Fair [not a race]

Oct 19 Metuchen Library Wills, Estate Planning & Probate Seminar at 7pm 480 Middlesex Ave, Metuchen, NJ 08840

4. Mark your calendar

Boy Scouts of America's, Middlesex County Toast to Scouting Award.

Tuesday, December 1 at
6:30pm Pines Manor
2085 State Route 27, Edison, New Jersey 08817

Honorees:

Brendan J. Flynn, Sr., Manager, Flynn and Son Funeral Home

Kenneth Vercammen, Esq., Attorney at Law, Edison, NJ

Walter H. Deutsch II, Vice President, Unity Bank

Michael Blackwell, Executive Director, The First Tee Raritan Valley

Hon. H. James Polos, Freeholder, Middlesex County

Given on behalf of the Boy Scouts of America, Patriots' Path Council

The event will be very deserving, recognizing the efforts and support, over the years, to so many. The dinner will be held on Tuesday, December 1, at the Pines Manor, Edison, NJ.

This awards dinner will raise funds to support the Scouting program in Middlesex County, with focus on STEM, Science, Technology, Engineering Math, and program support for Scouting.

This STEM initiative, offers over 80 STEM related merit badges, ranging from robotics, inventing, architecture, and many more. The BSA has partnered with institutions like MIT, Carnegie-Mellon and ExxonMobil, to provide our members with relevant skills and experiences in a constantly evolving global economy. The fund raised, will also assist with registration, insurance cost, programing needs, camp and individual scholarships, and a full-time Program Director for our AT-RISK Scouting program.

<https://www.facebook.com/events/439423476182637>

5. Next Fun Upcoming Running Races Charity events Selected by Kenneth Vercammen

10/11 East Brunswick 5k & 10k, 1pm RVRR new start EB Community Arts Center (721 Cranbury Rd. in East Brunswick), Road closed to traffic www.ebrr.org, post race we'll be going to Laurie's Lakeside on Farrington Lake, North Brunswick

10/17 Cranford 5k co-sponsor by Wakefern Shoprite

10/25 Trick or Trot 5k 11am now at Deal Casino

10/28 RVRR Halloween pub-crawl New Brunswick

If you are attending any of these charity races, please call or email Ken V. Kenv@njaws.com Often we car pool or meet at these events. I update this list

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