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Transfer of an estate to an individuals heirs after his death may be an orderly or thoroughly disorganized process. It depends on a four-letter word – WILL. Every person, eighteen (18) years of age or over should make one. This important document is a legal declaration of the way an individual wants his property distributed. Whether the estate is large or small, it is desirable to transfer what you own with a properly executed will – whether you are a man or woman, married or single. Those without wills may leave their survivors in financial insecurity or downright frustration. It is to the advantage of both the individual and his family or his close friends that he execute a will. Contrary to general opinion, frequently the smaller amounts involved, the greater trouble when there is no will. Squabbles over a few thousand dollars an be more bitter than fights over many thousands.

The information below was obtained from the website of the COUNTY OF CUMBERLAND STATE OF NEW JERSEY SURROGATES COURT

YOUR WILL – A BLUEPRINT FOR THE FUTURE

Making a will in an important step in your financial management program. To save your heirs time and money, plan now for the orderly transfer of your property. In this way the cost of a bond and possible disagreement among those who are to receive your property may be avoided. You decide to whom, when, and in what amounts your assets should go. You select your executor or personal representative, the one who shall be responsible for the disposition of the estate. You may avoid forced sale of your property, or costly and tedious applications to courts for the right to sell it. You have greater assurance that your plans will be carried out as you desire. One way to guarantee trouble to a family is not to make a will. Court records bulge with tragic tales of families torn apart and caused immeasurable pain and financial expense because the income producer did not do so. Without a will your estate must be distributed according to the intestate laws, the provisions of which are general and inflexible. The law will say show shall administer your estate, among whom, and how it shall be divided. By losing the privilege of naming your executor or personal representative, you may make a costly mistake. Your property may not be distributed as you wish, and thus cause hardship for those you want to safeguard most. Without a will you lose the privilege of naming a guardian for your minor children. This is vital, particularly if your spouse should not survive you. If you leave no immediate family, failure to leave a will may result in your property going to persons in whom you have no particular interest. Wills are not do-it-yourself projects. Secure the services of an attorney. Although many prepared without legal aid have been successfully executed, the risk is too great. A minor detail may invalidate your good intentions.

STEPS IN PREPARING YOUR WILL

A document that will stand up in court, if necessary, and be tailor-made to meet the needs of your family, must first be thought out carefully by you, and then skillfully prepared by a lawyer who specializes in will drafting and estate planning. He can guide you to the best decisions– but only after obtaining all the facts that you alone can give. Thus, you can be sure that your will is properly phrased, witnessed, and has all the technicalities observed. It is penny-wise and pound- foolish not to pay a lawyers fee for this service. The charge will depend on the size and character of the estate and the work involved. Here are some points to know when making a will:

- You dont need to make an itemized statement of your assets, nor do you need to state the disposition of your property item by item.
- You can change it at any time you wish, as your assets, beneficiaries or desires change.
- Your will is not recorded before death; no one need know of it if that is your wish.
- The existence of the will does not affect your ability to sell or dispose of property. You may continue as though you had not written the document.

Start by making a list of everything you own and all you owe -- a statement that will show exactly where you stand financially. Decide to whom you will lave your real and personal property. Do it systematically. Be certain you have stated just what your wishes are by making a list of the persons involved, their relationship to you, your objectives, when their bequest is to be given, and how it is to be provided -- through a trust fund, life insurance trust, etc., and the source of the funds, whether from the general estate or proceeds of insurance policies. Take this list to the lawyer who is counseling with you. Select an executor, executrix or personal representative to administer the will. This may be the beneficiary who will inherit the bulk of your estate, a member of the family, your legal or financial advisor, a trusted friend or business associate. You should name a contingent executor or personal representative to act in case your first selection dies before you, or is unable to serve. A bank can act as executor, personal representative, trustee under a trust, or guardian of either a minor or an incompetent person. A bank is experienced and familiar with accounting and management details. It is financially responsible and a continuing institution -- an individual may die, but a bank has continued life. In selecting your executor or personal representative and trustee, the choice should be made with great care. The decision should be businesslike, not sentimental. While sentiment and friendship cause some people to name members of the family or close friends, remember that your executor or personal representative has the important responsibility of settling your estate and seeing that the wishes expressed are faithfully carried out. Here are a few of things an executor or personal representative must do, in addition to seeing that the will is offered for probate:

- Qualify as executor, (also known as Personal Representative), obtain certificate of authority, and if necessary, execute a bond.
- Locate and take possession of all property, discover and assert all rights and line up claims owned by the estate.
- Prepare and file an inventory of all property and interest of any kind be longing to the estate, listing the appraised value.
- Review all assets, liquidating those of doubtful character.
- Advertise for claims and pay them in the order cited by law.
- Collect monies due the estate.
- Figure and pay taxes.
- Pay legacies under the will.
- Distribute the estate.
- Make final accounting to the court.

It is important that you name a guardian if you have minor children. When you consult the attorney, ask for a rough draft of your will and study it carefully before signing the final copy.

KEEPING YOUR WILL UP TO DATE

Periodically review your will to keep it up to date. Keeping it current is just as important as making one in the first place. Changes in your life such as marriage, birth of child, death, crippling accident, change of witnesses, purchase or sale of property, a change in your financial status -- or a change in the estate law may make important revisions or a new will advisable. A will drawn in another state can be valid; however, revisions in relation to New Jersey laws may be prudent. You are free to change it any time, but do it correctly.

HOW TO CHANGE YOUR WILL

The safe way to change a will is to have a new one drawn; however, a codicil may be effective. A codicil is a separate document used to make minor changes. It must be signed with the same formality as the will itself. It is not necessary to have the same witnesses on the codicil and the original will; however, both sets of witnesses must prove the will. Do not try to change your will by drawing lines through items, erasing, writing over or adding notations. This may destroy it as a legal document. Information compliments of Cumberland Surrogate.

INTESTATE SUCCESSION

When no will exists, the statutes of New Jersey provide for the distribution of property to heirs, that is, by intestate succession. HOW WILL YOUR PROPERTY BE DIVIDED IF YOU HAVE NO WILL? THE CHART BELOW SHOWS HOW AN ESTATE IS DISTRIBUTED IN NEW JERSEY IF YOU DO NOT LEAVE A WILL. If you die without leaving a Will and are a resident of New Jersey, the State law provides the manner for distributing your property. Your net estate remaining after deduction of debts, taxes, family exemptions, etc., would be distributed under the Statutes governing Decedents Estates and, in the case of most common occurrence, the heirs who would receive such property are as follows: Property owned jointly be husband and wife is automatically owned by the survivor. The following charts show the distribution of separately owned property. (Effective September 1, 1978) If You Die Leaving: Wife or Husband and Child or Children (also of Survivor) Or their Descendants Wife or Husband receives $50,000 plus one-half of balance Child or Children receive one-half of balance divided equally Grandchildren take their deceased parents share unless all children be deceased, then all grandchildren share equally.

APPOINTMENT OF ADMINISTRATOR OR PERSONAL REPRESENTATIVES

When there is no will, an administrator, administratrix or personal representative is appointed by the court. Any close relative may be appointed. For an individual or a bank to be appointed administrator or personal representative, all other heirs must renounce their right. A surety bond must be furnished by paying a premium to a surety company for signing his or her bond. In the case of spouse, the need for a surety bond is waived if the surviving spouse is the sole inheritor of the estate not exceeding $50,000.00. If the estate is over $50,000.00 a bond must be provided for the amount over $50,000.00. The county surrogate grants letters of administration showing the authority to act. Information compliments of Cumberland Surrogate.

HOW A WILL IS PROBATED

Upon the death of the testator or testatrix, the will is probated. This is the legal process which establishes the genuineness of the will. It is done by the surrogate in the county where the testator or testatrix resides at the time of death. The executor, executrix or personal representative is appointed by going to the Surrogate Court with the will, a death certificate, and one of the witnesses. If the "attestation" clause (where the witnesses sign) is properly worded, only one of the witnesses need be present when a will is probated. If the attestation clause is not correct, both witnesses must be present. If both witnesses are dead, and there is one attestation clause, the will can be probated by proving their signatures. If they have moved away, the surrogate can appoint a commissioner where the witnesses reside to take their testimony. If an Affidavit of Testator and witnesses is acknowledged by a Notary Public, the witnesses need not appear at the time of probate.

NOTICE TO CREDITORS TO PRESENT CLAIMS

When a NOTICE TO CREDITORS is published, the executor/trix, administrator/trix shall mail a copy of the NOTICE TO CREDITORS to each creditor of the estate of which the personal representative knows or which can be ascertained by reasonable inquiry, by ordinary mail to the creditors last known address.

TAXES THAT INFLUENCE YOUR WILL

Three kinds of taxes can influence the provisions of your will: inheritance, estate and gift. An inheritance by will, by law, by surviving joint owner, or from life insurance is not income and is not subject to income tax.

New Jersey Inheritance Tax Inheritance Tax is a tax payable by an heir or beneficiary for the right to acquire the property of a deceased person or to receive a gift in anticipation of death. The tax is determined by the amount inherited and by the relationship of the individual to the deceased. In New Jersey, no one is taxed for receiving property, including money, worth up to $499.99.

Inheritance Tax Rates Spouses: All property passing to a spouse from a deceased spouse who died since January 1, 1985 is free of New Jersey inheritance tax. Forms for proving the exemption on checking accounts, savings accounts, Certificates of Deposit, etc. may be obtained from the institution holding the funds. Parents, grandparents, children, grandchildren, adopted children, or stepchildren: The first $50,000.00 is exempt where the decedent died between July 1, 1985 and July 1, 1986. The exemption is raised to $150,000.00 for decedents dying between July 1, 1986 and July 1, 1987; to $250,000.00 for decedents dying between July 1, 1987 and July 1, 1988. After July 1, 1988 all property passing to such persons is exempt. Brother, sister, daughter-in-law, or son-in-law: If the inheritance is $500.00 or more, the tax is 11 percent of the entire amount up to $1,100,000.00 and increases gradually thereafter. For persons dying after July 1, 1988 the exemption is $25,000.00. Every other beneficiary pays 15 percent on the total amount up to $700,000.00. Tax is 16 percent on remainder. Charitable, religious, or benevolent institutions: Each beneficiary in this class is tax exempt entirely. Money or property left the State of New Jersey, a municipality, or a nonprofit educational institution is exempt from inheritance tax.

Filing New Jersey Inheritance Tax Returns A substantial number of estates remain taxable and even some on which no tax is due require the filing of a New Jersey Inheritance Tax Return. Tax forms and instructions are furnished by the District Supervisor of the Transfer Inheritance Tax Bureau in the county where the decedent (a deceased person) resided at the time of death. The Executor, administrator or a personal representative files the completed inheritance tax return with the District Supervisor of the Transfer Inheritance Tax Bureau.

Clearing Title and Transferring Property For those estates that are taxable, unpaid inheritance taxes are a lien on New Jersey real estate and shares and stocks of corporations and financial institutions organized under laws of New Jersey. If there is no tax, the Transfer Inheritance Tax Bureau sends waivers that are required to clear title to the land and transfer ownership of bank accounts or securities.

If there is a tax, a bill is submitted and the waivers sent when the tax is paid. To clear title to real property, a waiver is filed with the county clerk in the county where the land is located. Land held by husband and wife as tenants by the entirety need not be reported and may be transferred without a waiver in the estate of the one first dying. To transfer stocks, shares, and securities of financial institutions and New Jersey corporations, the executor, administrator or personal representative sends waivers to them when asking transfer.

Inheritance tax returns must be filed and the tax paid within 8 months after decedents death to avoid interest, charged at the rate of 10 percent per year. Although the interest penalty cannot be waived beyond this 8-month period, the time for filing may be extended on application to the bureau. This tax information is general and may not apply to each estate; therefore, it is advised that the inheritance tax supervisor be contacted for further information before the estate is settled.

Gift Tax New Jersey does not levy a tax on gifts, except in anticipation of death. Any gift made within 3 years of death is presumed to be in anticipation of death and may be subject to New Jersey Inheritance tax. An individual may give an amount up to $10,000 to any one person during the calendar year, exempt from tax. A married couple can give up to $20,000 to a person yearly without tax. Any number of tax- free gifts may be made during the year. If you make gifts to one person of more than $10,000 during the calendar year, file a Federal Gift Tax Return with the District Director of Internal Revenue. Gifts between husband and wife are exempt from Federal Gift Tax. Federal Marital Deductions An unlimited amount of real and personal property can be transferred between spouses without Federal Estate Tax. For proper application of the marital deduction, contact your attorney or trust officer at your bank.

SELF PROVING WILLS RECOMMENDED USE SELF PROVING WILLS TO SPEED UP PROBATE

Prior to 1978, New Jersey Probate Rules required one of the two witnesses to a will to travel and appear in the surrogate¹s office and sign a paper 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.

In 1978, the New Jersey Legislature passed a law to create a new type of will called a ³Self-Proving Will.² In such a will, the person for whom the will is made will sign. Then two witnesses sign. Then the attorney or notary must sign; with certain statutory language to indicate the will is self proving. When done properly, the execution will not have to locate any witnesses. This usually saves time and money. If your will is not ³self-proving² or if you are unsure, schedule an appointment with an elder law attorney.

GLOSSARY

Administrator, Administratrix (also known as Personal Representative) -- Person or institution appointed by the court to manage and distribute the estate of a person who dies without a will.

Beneficiary – Person named to receive property or benefits.

Codicil – An addition or supplement made to change or add provisions to a will.

Contingent beneficiary – Receiver of property or benefits if first-named beneficiary dies before receiving all benefits.

Contract – Legally enforceable agreement.

Decedent – A deceased person.

Devise – To give real or Personal Property.

Estate – Everything a person owns, all real and personal property owned.

Executor, Executrix (also known as Personal Representative) – A person or institution named in the will to carry out the provisions and directions of the will.

Intestate – A person who dies without making a valid will.

Legatee – Person who receives personal property under a will.

Levied – To collect by assessment.

Lien – A charge upon property, real or personal, for the satisfaction of a debt.

Personal property – Intangible property, such as stocks, bonds, or bank accounts; and tangible property such as Furniture, Automobile, and Jewelry.

Probate – Official proof of the genuineness of a will.

Real property – Land and buildings.

Surrogate – A judicial officer who has jurisdiction over the probate of wills in the absence of a contest and acts as the Clerk of the Probate

Court in the settlement of estates, guardianships, and trusts.

Tenants in common – Two or more persons owning individual interests in property.

Testator, Testatrix – The person who makes a will.

Trust – Property owned and managed by one person for the benefit of another.

Trustee – Person or institution holding property in trust.

Waiver – A legal instrument relinquishing a right or lien.

Will – A legal declaration of the manner in which a person wishes his

estate divided after death.

Witness – Person who observes the signing of a will and also attests to

the signatures.

Part of the above information from the website of the Surrogate of Cumberland County.

Contact the Law Office of

Kenneth Vercammen & Associates, P.C.

732-572-0500

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