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1. New Expungement Law permits petitions for Expungement of arrests in shorter time periods.

This is an excellent law to help non-violent offenders.

This new law establishes new expungement procedures for records and information pertaining to crimes and offenses, including procedures for persons who are, or previously have been, successfully discharged from the State's special probation drug court program. It also provides shorter waiting periods before certain records and information become expungeable.

You can now get expungements for both the crime and the disorderly persons convictions.

The new law takes effect until April 18, 2016.

The time period for expunging a Municipal Court criminal charge may be reduced to 3 years if you can show exception circumstances. Otherwise it stays 5 years.

Regarding a person with a criminal conviction, that person would be permitted to make an application with an expungement petition to the Superior Court in the county in which the criminal conviction was adjudged. That application could include additional, separate petitions seeking to expunge no more than two other convictions for disorderly persons or petty disorderly persons offenses. The application could only be filed after the expiration of five years from the date of the person's most recent conviction, payment of fine, satisfactory completion of probation or parole, or release

from incarceration, for the crime or for any disorderly persons or petty disorderly persons offense, whichever is later (the waiting period under current law for a criminal conviction expungement is ordinarily 10 years). Alternatively, the court could grant an expungement on the application if less than five years has expired from the payment of any fine but the five-year waiting period is otherwise satisfied, and the court finds that the person substantially complied with any payment plan for that fine or could not do so due to compelling circumstances.

Regarding a person with a conviction for a disorderly persons or petty disorderly persons offense, but no criminal conviction, that person would be permitted to make an application with an expungement petition to the Superior Court concerning that offense following a procedure similar to that used for criminal convictions. The application, like an application concerning a criminal conviction, could include additional, separate petitions seeking to expunge no more than two other convictions for disorderly persons or petty disorderly persons offenses. The application could only be filed after the expiration of three years from the date of the person's most recent conviction, payment of fine, satisfactory completion of probation or parole, or release from incarceration for any disorderly persons or petty disorderly persons offense, whichever is later (the waiting period on convictions for such offenses under current law is five years). Alternatively, the court could grant an expungement on the application if less than three years has expired from the payment of any fine but the three-year waiting period is otherwise satisfied, and the court finds that the person substantially complied with any payment plan for that fine or could not do so due to compelling circumstances.

Regarding a person with an arrest or charge that did not result in a conviction or finding of guilt, whether the proceedings were dismissed, or the person acquitted or discharged, upon a person presenting an application for expungement:

(1) if the proceedings took place in Superior Court, the court, at the time of dismissal, acquittal, or discharge, would order the expungement of all records and information relating to the arrest or charge; or

(2) if the proceedings took place in municipal court, the municipal court would provide the person with appropriate documentation to transmit to the Superior Court to request an expungement, and the Superior Court, upon receipt of the documentation with an expungement request would take action

to order the expungement of all records and information relating to the arrest or charge. A person seeking such an expungement of municipal court matters would not be charged an application fee for taking such action.

An expungement related to a dismissal, acquittal, or discharge without a conviction or finding of guilt would not be available whenever the dismissal, acquittal, or discharge resulted from a plea bargaining agreement involving the conviction of other charges. However, this bar on such expungements would no longer apply once the conviction connected to the plea bargain was itself expunged.

If the person did not apply for an expungement related to a dismissal, acquittal, or discharge at the time such action occurred, the person could, at any time following the disposition of proceedings, present to the Superior Court in the county in which the disposition occurred an application with a duly verified petition, containing relevant details concerning the applicant and the arrest or charge for which the expungement is sought. The person, pursuing this "after the fact" expungement application, would also not be charged an application fee.

A copy of any Superior Court order of expungement related to a dismissal, acquittal, or discharge would be presented to the appropriate court and the prosecutor. The prosecutor would then be responsible for promptly distributing copies of the expungement order to appropriate agencies with custody and control of the records specified in the order so that they may be properly expunged.

Regarding a person who is, or was prior to the effective date of the law, successfully discharged from the State's special probation drug court program, the law would permit the Superior Court that had sentenced the person to the program to expunge all records and information relating to prior arrests, detentions, convictions, and proceedings for any offense enumerated in the Criminal Code, Title 2C of the New Jersey Statutes, existing at the time of discharge from the program. However, the person would not be eligible for such an expungement action if the person's records include a conviction for any offense barred from expungement pursuant to N.J.S.2C:52-2.

For a person who is successfully discharged on or after the effective date of the law, the person would only be eligible to have all prior matters expunged if the person was not convicted of any crime, disorderly persons offense, or petty disorderly persons offense during the term of special

probation. For a person who was successfully discharged prior to the effective date of the law, the person would only be eligible to have all matters expunged that existed at the time of discharge from the program if the person has not been convicted of any crime or offense since the person's date of discharge.

The Superior Court would grant the person successfully discharged from the special probation drug court program the relief of expungement, unless it finds that the need for the availability of the records and information outweighs the desirability of having the person freed from any disabilities associated with their availability. The person would not be charged any fee for such an expungement action.

Lastly, regarding the continued availability of any expunged records and information, the law updates the statutory list of parties within the criminal justice system that may still view such records and information. Along with courts, county prosecutors, the Probation Division of the Superior Court, and the Attorney General, the Pretrial Services Program making pretrial release recommendations on certain persons undergoing the release determination process set forth in sections 1 through 11 of P.L.2014, c.31 (C.2A:162-15 et seq.) would also be able to examine expunged records and information.

As amended and reported, this law is identical to Assembly Law Nos. 206, 471, 1663, 2879, 3060, and 3108 (ACS/2R), as also amended and reported by the committee. SENATE, No. 2663
More info on hiring an attorney for an expungement
at http://www.njlaws.com/expungement.html

2. 2016 update Wills and Estate Planning Seminar materials
By Kenneth Vercammen

1. Federal Estate Tax exemption increased to $5,450,000 in 2016 so no Federal Estate Tax. However, New Jersey taxes estates over $675,000
2. Gifts permitted without Federal Estate & Gift tax remains at $14,000 per person.
3. We recommend Self- Proving Wills since witnesses to Will often move or pass away
4. Non-formal writings could be Wills under the 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
10 Organ donor facts

1. Federal Estate Tax exemption increased to $5,430,000 in 2015 so no Federal Estate Tax. However, New Jersey taxes estates over $675,000.

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 was 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 nonattorney 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 remained at $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 "selfproving" 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 Courts affirmed a Will could be voided 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.

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, 433 N.J. Super. 258, (App. Div. 2013) 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.

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, 391N.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 done." 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 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 coowned 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 prepared

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

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

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

Attorneys 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. A 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.

10. Organ Donor Facts

Our Living Wills have been revised to include an Organ donor selection. Please also sign an organ donor card and register to be an organ donor, even eyes, with https://www.njsharingnetwork.org. Ken V signed an organ donor card and also is a volunteer in a medical study using donated knee cartilage to fix knee damage from 40 years of competitive running and triathlon, Tae Kwon Do and other sports.

Who can be a donor? People of all ages and medical histories should consider themselves potential donors. Your medical condition at the time of death will determine what organs and tissue can be donated.

Does my religion support organ and tissue donation? Every major religion in the United States supports organ and tissue donation as one of the highest expressions of compassion and generosity.

Is there a cost to be an organ, eye and tissue donor? There is no cost to the donor's family or estate for donation. The donor family pays only for medical expenses before death and costs associated with funeral arrangements.

Does my social and/or financial status play any part in whether or not I will receive an organ if I ever need one? No. When you are on the transplant waiting list for a donor organ, what really counts is the severity of your illness, body size, tissue type, blood type and other important medical information.

Why should I register to be an organ and tissue donor? Organ andtissue transplants offer patients a new chance at healthy, productive, and normal lives and return them to their families, friends and communities. To learn more or to register to become an organ and tissue donor,

visit www.NJSharingNetwork.org. Also contact your attorney to have a Living Will/ Advance Directive prepared.

http://www.njlaws.com/EstatePlanning.htm

NJ Estate	NJ Estate Tax Due
$700,000	$9,250
750,000	20,399
800,000	22,799
850,000	25,199
900,000	27,600
950,000	30,400
1,000,000	33,200
1,050,000	36,000
1,100,000	38,800
1,150,000	42,000
1,200,000	45,200
1,250,000	48,400
1,300,000	51,600
1,350,000	54,800
1,400,000	58,000
1,450,000	61,200
1,500,000	64,400
1,550,000	67,600
1,600,000	70,800
1,650,000	74,400
1,700,000	78,000
1,750,000	81,600
1,800,000	85,200
1,850,000	88,800
1,900,000	92,400
1,950,000	96,000
2,000,000	99,600

The Federal Estate Tax applicable exclusion amount is
$1,500,000 (2004-2005),
$2,000,000 (2006-2008),

$3,500,000 (2009),
$5,000,000 (2010-2011),
$5,250,000 (2013), $5,340,000 (2014),
$5,430,000 (2015),
and $5,450,000 (2016)

Beginning January 1, 2011, estates of decedents survived by a spouse may elect to pass any of the decedent's unused exclusion to the surviving spouse.

This election is made on a timely filed estate tax return for the decedent with a surviving spouse. Note that simplified valuation provisions apply for those estates without a filing requirement absent the portability election. See the Instructions to Form 706 for additional information.

Exclusions

* The annual exclusion for gifts is
* $11,000 (2004-2005),
* $12,000 (2006-2008),
* $13,000 (2009-2012)
* and $14,000 (2013-2016).

The applicable exclusion amount for gifts is
$1,000,000 (2010),
$5,000,000 (2011),
$5,120,000 (2012),
$5,250,000 (2013),
$5,340,000 (2014),
$5,430,000 (2015),
and $5,450,000 (2016).

More information on Wills and Probate at
http://njwillsprobatelaw.com and
www.CentralJerseyElderLaw.com

Remember to order your Super Bowl sandwiches from Craig's Deli, II, 2045 Woodbridge Avenue, Edison, NJ. Phone: 732-287-9299

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