

**NJ LAWS EMAIL  
NEWSLETTER E492  
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Recent cases:

- 1. DWI Refusal Notice Withstands Challenge. State v. Quintero \_\_ NJ Super \_\_ (App. Div. 2016).**

The court affirms defendant's de novo conviction for refusal to submit to a breath test, N.J.S.A. 39:4-50.4a. Defendant argues that the Attorney General's current standard statement under N.J.S.A. 39:4-50.2(e) is fundamentally deficient for not specifying the mandatory minimum penalties for refusal. In *State v. O'Driscoll*, 215 N.J. 461, 479-480 (2013), the Supreme Court noted, but declined to address, the sufficiency of the standard statement.

The court hold that the current standard statement

satisfies the statutory mandate - that is, informing motorists and impelling compliance - by adequately informing drivers of the maximum potential license revocation and fine, and the possibility of ignition interlock, that they face for refusal. In so ruling, The court note that adding other details, including the differing mandatory minimum and maximum penalties for first offenders, second offenders, and certain third offenders, may run the risk of submerging the most significant penalties in those details.

## **2. Sup Mt Denied Where Police Looking in House for Missing Dementia Patient Found Pot Plants. State v Mordente \_\_ NJ Super.\_\_ (Ap0p. Div. 2016) A-5838-13T1**

The court affirmed the denial of a motion to suppress the evidence of marijuana plants found in the basement of a home searched as part of the police protocol for locating missing persons. The sixty-five year old missing woman in this case suffered from dementia, and was reported by her son as having left the home at some point during the night prior to the search.

In his dissent, Judge Fuentes opines that the police emergency aid doctrine does not justify this search under the guidelines set forth in State v. Vargas, 213 N.J. 301 (2013), and prior case law.

## **3. "CONFIDENTIAL WILL QUESTIONNAIRE"**

If you or anyone you know needs an updated Will, Power of Attorney or Living Will, please have them fill out our short confidential interview form and schedule a consult.

Please fill out completely and fax or mail back. This form is extremely important. Your accuracy and completeness in responding will help me best represent you. All sections and information must be filled out prior to sitting down with the attorney.

Please be sure to check all appropriate boxes. If "NONE", please state "NONE".

If "NOT APPLICABLE", please state "N/A" or none.

PLEASE PRINT CLEARLY

1. Your Full Name: \_\_\_\_\_

2. IF MARRIED OR SEPARATED, complete (a) and (b) below:

(a) Spouse's Full Name:

\_\_\_\_\_

3. Your First Last Street Address: \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip  
Code \_\_\_\_\_

4. Telephone Numbers:

Cell: \_\_\_\_\_

\_\_\_\_\_

5. E-mail address: \_\_\_\_\_

6. Referred By: \_\_\_\_\_

We recommend a Durable Power of Attorney in the event of your physical or mental disability to help you with financial affairs?

Yes \_\_\_ No \_\_\_

We recommend a Living Will telling hospitals and doctors not to prolong your life by artificial means, i.e. Terri Schiavo; Karen Quinlan? Yes \_\_\_\_\_ No \_\_\_\_\_

How can we help you? What are your questions/other important information?  
\_\_\_\_\_

8. Marital Status:  Single  Married  
 Separated  Divorced  Widowed

If you are the parent or legal guardian of a minor child or minor children, please check here.

## 2. ESTATE EXECUTOR

The person charged with administering/Probating your estate, paying taxes and/or other debts, preserving, managing, and distributing estate assets and property is called an Executor. This person should be one in whom you have trust and confidence. Your SPOUSE is usually named as primary Executor, followed by the child who lives closest to your home.

Please provide the following information about the person you wish to name to serve in this capacity.

1. PRIMARY Choice of Executor/Personal Representative in Power of Attorney:

Name: \_\_\_\_\_

\_\_\_\_\_

First Last

Relationship: \_\_\_\_\_

Address: \_\_\_\_\_

2. SECOND Choice of Executor/Personal Representative in Power of Attorney:

This individual will serve in the event that the primary executor/personal representative is not alive at the time of your death, or is unable to serve.

Name: \_\_\_\_\_  
\_\_\_\_\_

First	Last
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Relationship: \_\_\_\_\_ Address: \_\_\_\_\_

\_\_\_\_\_

The two proposed Executors must be filled out prior to meeting the attorney. We do not recommend Joint Executors, which often cause conflicts and additional work for the Estate. It is best to select one primary person, then a secondary person.

Asset Information- Must Be Completed - If none, write "none"

House/Real	Estate	Address
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\_\_\_\_\_

Estimate Total Real Estate Value: \_\_\_\_\_ Approx mortgage \_\_\_\_\_

Bank Accounts, Stocks, CDs and Assets:

\_\_\_\_\_

Approximate	Amount
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\_\_\_\_\_

Direct Beneficiaries of Accounts - If none write "none"

\_\_\_\_\_

Other Major Assets - If none, write "none"

\_\_\_\_\_

Approximate Life Insurance: \_\_\_\_\_

Beneficiary \_\_\_\_\_

In the Will- Who do you want to get your assets:

Beneficiary (1) \_\_\_\_\_  
Relationship \_\_\_\_\_

Beneficiary (2) \_\_\_\_\_  
Relationship \_\_\_\_\_

Beneficiary (3) \_\_\_\_\_  
Relationship \_\_\_\_\_

Any Specific Bequests of Money and Property:

\_\_\_\_\_

A. MARRIED PERSONS WITH CHILD(REN)  
OR GRANDCHILD(REN).

Generally most married people provide that, upon their death, property will be distributed as follows:

1. Your estate (all property and assets not owned jointly with another person) will be distributed to your surviving spouse.

2. If your spouse predeceases you, then your estate will be divided in equal shares among all of your living children, If any child shall predecease you, then that child's share to their children (grandchildren).

Names of Children: \_\_\_\_\_ Age: \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_ Age: \_\_\_\_\_  
LIST THE NAMES AND AGES OF ALL CHILDREN EVEN IF THEY ARE OLDER THAN EIGHTEEN. IF NO CHILDREN, WRITE NONE. If no minor children, skip page 5.

III. GUARDIAN(S) OF MINOR CHILD(REN) or

## Trustees of Trust

[Skip this section if you have NO minor children and DO NOT want a trust. There are substantial additional fees for preparation of a Trust, minimum \$2,500 for stand alone trusts]

The surviving parent of a minor child is ordinarily entitled to be the GUARDIAN of that child. In the case of simultaneous death of you and your spouse, or if you are a single parent, you should appoint a Guardian for your minor child. It is advisable, prior to the completion of this Questionnaire, to make sure that your proposed Guardian(s) is (are) willing to serve as Guardian(s). In addition, the Guardian will also hold the monies for the minor children UNLESS you direct us otherwise. In your Will you can have any adult serve as Trustee of monies for minor children.

Provide the following information about the person(s) you select to be Guardian(s)/Trustee(s). In the event my spouse predeceases me, I name as GUARDIAN(S)/ TRUSTEE(S):

### 1. PRIMARY Choice of GUARDIAN / TRUSTEE:

Full \_\_\_\_\_ Name:

Relationship: \_\_\_\_\_

### 2. SECOND Choice of GUARDIAN / TRUSTEE:

Full \_\_\_\_\_ Name:

Relationship: \_\_\_\_\_

[  ] B. MARRIED PERSONS WITH NO CHILD(REN) OR GRANDCHILD(REN).

Generally most married people with no child(ren) or grandchild(ren) provide that upon their death their property will be distributed as follows:

1. Your estate (all property and assets not owned jointly with another person) will be distributed to your surviving spouse, but
2. If your spouse predeceases you, then your estate will be distributed to your living parent, or equally to your living parents.
3. But should both of your parents predecease you, then your estate will be distributed equally to your brothers and sisters or equally to the children of a predeceased brother or sister.

Please check B above only if you wish your property distributed precisely and exactly as indicated in section B, 1 through 3, above.

Additional information on Wills, Probate and Elder Law available at [www.njlaws.com/will\\_questionnaire.htm](http://www.njlaws.com/will_questionnaire.htm)

C. DIVORCED OR WIDOWED PERSONS WITH CHILD(REN) OR GRANDCHILD(REN). Generally, most divorced or widowed persons with child(ren) or grandchild(ren) provide that upon their death property will be distributed as follows: 1. Your estate (all property and assets not owned jointly with another person) will be distributed in equal shares to all of your living child(ren).

2. But if one or more of your children predeceases you, that deceased child's share will be distributed to his or her child(ren), your grandchild(ren) in equal shares

D. ALTERNATE PLAN OF DISTRIBUTION - You may list specific gifts to individuals and/or divide your estate among several individuals by listing



percentages to each, making sure that the percentages total 100%. You may add additional sheets if necessary or use the back of this form. There are additional Will preparation fees if there are gifts, called specific bequests.

Are there any beneficiaries with special needs, or receiving SSI or SDD? Please answer in detail \_\_\_\_\_

Are you or any of your Beneficiaries are not United States citizens? \_\_\_\_\_

If not US citizen, extra taxes apply.

Do you have any religious wishes on burial? \_\_\_\_\_

PLEASE WRITE DOWN ANY QUESTIONS YOU HAVE HERE or anything else important that we should be aware. Use back of this page for additional important information:

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## ESTATE PLANNING

Your estate may be subject to NJ Estate Taxation if the total of your assets exceeds \$675,000. If your assets exceed \$675,000 and you desire estate planning to avoid or reduce your estate tax or require a Trust to protect a spouse, please advise Mr. Vercammen. A Standard Will is not designed to address estate tax issues. We do not do Federal Tax Planning or Medicaid Nursing Home Planning.

### WILLS:

T1- Parents with minor children and trust for children

T 2- Parents no spouse

T 3 Unmarried

T 4- Parents without trust

T5- Spouse/ Children Trust if assets over \$1 million?

[Due to complexity and need to re-title assets, Fees for Trusts are minimum \$2,500.]

More information on Wills and Probate

at: <http://njwillsprobatelaw.com>

To schedule an appointment for Wills and Estate

Planning

Contact

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Editorial Assistance Provided by Adam Levine. Mr. Levine is participating in Ken Vercammen's Spring Internship Program and recently graduated the Pennsylvania State University.

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