

NJ LAWS EMAIL NEWSLETTER E465

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1. Ten Estate Planning Ideas for Divorced or Separated Persons
2. Recent Cases: Driver is not subject to criminal driving while suspended if DWI suspension period expired prior to driving.
3. Court permits police to ignore guidelines requiring Alcohol influence report be given to DWI suspects.
4. New YouTube educational videos, Making Changes to Last Will and Testament, Pre-Trial Intervention, Conditional Discharge of First Time Drug Arrests, Defense to criminal charges committed while someone intoxicated.

1. Ten Estate Planning Ideas for Divorced or Separated Persons

Under the laws of most states, if a married person dies without a Will and without children, their spouse will inherit all assets, even if they are separated from the spouse. In addition, if you have children from a previous marriage, but no Will, your separated spouse often will get half your estate. In planning, make sure your assets go to your loved ones or favorite charity, rather than a soon to be ex.. Therefore, recommend the following:

1) Have an Elder Law attorney prepare a Will to distribute your assets to the people you care the most about. If you already have a Will, prepare a new Will and have the old Will revoked. (Your estate planning attorney will explain this to you.)

2) Prepare a new Power of Attorney to select someone to handle your finances if you become disabled. Have your old power of attorney revoked asap, with written notice to the ex and the attorney who drafted the original document.

3) Prepare a new Living Will prepared

4) Change your beneficiary on assets you may own, such as stocks, bank accounts, IRA, and other financial assets. Change your beneficiary under your own life insurance, whether whole life insurance or term insurance.

5) Contact your employer's human resources and change the beneficiary on life insurance, pension, stock options or other employee benefits. Note that if you are not yet divorced, your spouse may have to sign a written waiver permitting you to change beneficiaries.

6) Keep your personal papers at a location where family can find them and can't be stolen or destroyed by angry spouse..

7) Have your attorney prepare a prenuptial agreement if you decide to get married again.

8) Make sure the trustee for any funds designated for your children is the right trustee, not your former brother in law.

9) In New Jersey and many states, if you are married and living with your spouse, under certain instances the surviving spouse has a right to elect against the Will. The disinherited spouse may like to elect against the Will and try to obtain one third of the estate. Your attorney can explain how you can protect yourself and your children.

10) If you have minor children, nominate someone under a Will to serve as guardian to the children. Although the surviving parent obviously has first right of custody of children, they may not even want custody.

For single moms, they should have these documents prepared so they can select first choice as guardian for their kids. Example, select your own mother as guardian, rather than the deadbeat father who does not timely pay child support or pick up the child for visitation.

2. Driver is not subject to criminal driving while suspended if DWI suspension period expired prior to driving. State v Perry __ NJ Super. __ (App. Div. 2015)Docket A-1767 -13T2

N.J.S.A. 2C:40-26(a) and (b) make driving while suspended under specified circumstances a fourth-degree crime, punishable by a mandatory minimum jail term of 180 days, where the underlying suspension arose

from driving while intoxicated (DWI), N.J.S.A. 39:4-50, and/or refusal to submit to chemical testing, N.J.S.A. 39:4-50.4(a). The court concluded in these appeals that prosecutions under the statute can be brought only if the act of driving while suspended occurs during the court-imposed term of suspension.

Note- Ken V successfully represented four of the winning parties before the Law Division. The Appellate Division affirmed the well-reasoned opinion of Hon. Douglas Wolfson JSC.

3. Court permits police to ignore guidelines requiring Alcohol influence report be given to DWI suspects. State v Sorensen __ NJ Super. __ (App. Div. 2015) A-3797-13T4

After the Law Division suppressed defendant's blood alcohol content (BAC) results, it sentenced her on her guilty plea to driving under the influence. Nonetheless, the State's appeal of the suppression was not barred by double jeopardy because defendant had entered a conditional plea to, and been sentenced for, the per se violation in Municipal Court.

The Law Division suppressed the BAC results because the Alcotest operator did not give a copy of the Alcohol Influence Report (AIR) to the arrestee in the police station. Although State v. Chun, 194 N.J. 54, 82 (2008), said the operator "must" do so, that comment about recommended Alcotest procedure did not override the statutory standard only requiring the police to give a copy of the breath test results upon request. N.J.S.A. 39:4-50.2(b). In any event, the timing of copy delivery does not affect the validity of the test results. Moreover, police must advise arrestees of their ability to request a copy and to get an independent test. Therefore, suppression is not warranted in the absence of prejudice. Furthermore, a suppression remedy should not be imposed retroactively.

Judge Sabatino concurs in the result. Given the time-sensitive dissipation of alcohol in the bloodstream, he believes Chun sensibly requires the operator to provide a copy of the AIR contemporaneously, consistent with the policies of the Attorney General and the State Police, and that the statute does not foreclose affording such added procedural protection to tested drivers. He agrees that suppression in this case and retroactive relief are not warranted

4. New YouTube Educational Videos

Making Changes to Last Will and Testament

<https://www.youtube.com/watch?v=JTT0ISNiWSc>

Pre-Trial Intervention

<https://www.youtube.com/watch?v=BUMWd26MxWg>

Conditional Discharge of First Time Drug Arrests

<https://www.youtube.com/watch?v=OAsr5pO-IHE>

Defense to criminal charges committed while someone intoxicated

<https://www.youtube.com/watch?v=vkTsqsqAM-c>

More at:

<https://www.youtube.com/user/kvercammen>

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