

2014 update Wills and Estate Planning Seminar materials

By Kenneth Vercammen, plus the Greenbaum Rowe Law Office Alert - An Overview of Key Provisions of the American Taxpayer Relief Act. We thank the Greenbaum Rowe office for permitting us to share their valuable information.

1. Federal Estate Tax exemption now permanently increased so no tax for Estates under \$5,340,000., and will be adjusted annually for inflation. However, New Jersey taxes estates over \$675,000.
2. Gifts permitted without Federal Estate & Gift tax was increased to \$14,000 per person.
3. We recommend Self- Proving Wills since witnesses often move or pass away
4. Non-formal writings could be Wills under the New 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. Taxpayer relief act

1. Federal Estate Tax exemption is now permanently increased so no tax for Estates under \$5,340,000, and will be adjusted annually for inflation. However, New Jersey taxes estates over \$675,000.

Federal Exemption Amount for Non-Citizen Spouses is \$145K up from \$143K.

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 has been 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 non-attorney 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 was increased to \$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 "self-proving" 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 Supreme Court held a Will could be void 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. In the Matter of the Estate of Madeleine Stockdale, Deceased 196 NJ 275 (2008)

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.

[Estate of Ostlund v. Ostlund, [391 N.J. Super. 390](#), 401 (App. Div. 2007).]

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, 391 N.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 donee." 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 usually 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 co-owned 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.

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>

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

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

My law office 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. The 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.

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

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

KENNETH VERCAMMEN & ASSOCIATES, PC
ATTORNEY AT LAW
2053 Woodbridge Ave.
Edison, NJ 08817
(Phone) 732-572-0500

10. American Taxpayer Relief Act

By the Greenbaum Rowe Law Office

On January 1, 2013, Congress passed the American Taxpayer Relief Act ("Act"). While certain provisions of the Act are considered to be "permanent", an overhaul of the Internal Revenue Code later this year or in a subsequent year could impact certain of the "permanent" changes. An overview of some of the Act's provisions, which are likely to be applicable to our clients, is provided below.

Important Provisions Included in the Act

Estate Tax

The old \$5,000,000 gift and estate lifetime exemption has been made permanent and will be adjusted annually for inflation (IRS set it at \$5,250,000 for 2013 and 5,340,000 for 2014). The \$5,000,000 indexed exemption for the generation skipping transfer tax has also been made permanent. Portability (i.e., the provision in the estate tax law that allows a surviving spouse the benefit of the unused lifetime exemption of his or her predeceased spouse) has also been made permanent. The one downside of the new law is that the maximum estate tax rate has increased from 35% to 40%.

Individual Income Tax Rates

Ordinary Income. The new law increased the highest marginal federal income tax rate to 39.6% for married couples filing jointly with \$450,000 of taxable income, heads of household filers with \$425,000 taxable income, and single filers with \$400,000 of taxable income. The existing tax brackets for lower income thresholds were not changed.

Long Term Capital Gains. Although the long term capital gains rate remains at 15% for most filers, those in the 39.6% tax bracket will be faced with a 20% capital gains rate and a 3.8% additional investment surtax (which will be used to fund healthcare).

Temporary Payroll Tax Cut Expires. For each of the past two years, FICA withholding on wages had been reduced from 6.2% to 4.2% on the first \$100,000 of wages. The new law does not extend this payroll tax holiday. As a result, wage earners will see a direct adverse effect on their paychecks (of up to \$2,000 per year).

Miscellaneous Taxes

Many temporary tax provisions were extended for 2013, including but not limited to the child tax credit, the earned income credit, the American Opportunity tax credit, qualified tuition deductions, bonus depreciation, various research and energy credits, the temporary exclusion of the gain on the sale of certain small business stock, and the reduction of the recognition period for built-in gains tax in the case of S corporations.

Roth 401(k) Conversions

Effective January 1, 2013, 401(k) plans could be amended to permit participants to convert pre-tax accounts, including amounts accumulated prior to 2013, to designated Roth accounts within the same plan, without regard to the participant's eligibility to take a distribution from the plan. Prior to the enactment of the new law, 401(k) participants could only complete an in-plan Roth conversion with respect to the portion of their account balance that was otherwise distributable under the terms of the plan, such as on account of severance from employment, attainment of a particular age (e.g., 59½) or disability. Pre-tax contributions, and earnings on such amounts, that are converted to a designated Roth account are includable in the participant's gross income in the year of the conversion. Subject to certain timing and other restrictions, however, all Roth 401(k) contributions and earnings may be withdrawn tax-free. The new, more flexible Roth conversion rules also apply to 403(b) and governmental 457(b) plans.

Qualified Charitable Distributions from IRAs

The Act reinstates, through the end of 2013, the ability for individuals aged 70½ or older to make "qualified charitable distributions" from their traditional or Roth IRAs to certain charitable organizations without having to include such amounts in gross income or take a charitable contribution deduction. To constitute a "qualified charitable distribution," the amount(s) donated by an IRA owner must, among other requirements, be transferred directly from the IRA to the recipient charity and cannot exceed the aggregate amount of \$100,000 in a single taxable year. Although excludible from gross income, qualified charitable deductions still count toward the annual "required minimum distribution" that generally must be taken by an IRA owner beginning in the calendar year after attaining 70½ years of age. Under special rules applicable for 2012, a taxpayer may make a qualified charitable distribution in January 2013 and elect to treat it as having occurred in 2012. In addition, a taxpayer may retroactively elect to treat an IRA distribution received in December 2012 as a qualified charitable distribution for that year, provided, among other requirements, that cash in the distribution amount is transferred to the charitable organization in January 2013.

Planning Opportunities and Next Steps

As a result of the stability provided under the Act in the estate and gift tax areas, it is now an opportune time for individuals to review their personal situations and consider moving forward with certain wealth transfer transactions or changes to their Wills which may have been put on hold. In addition, individuals with significant holdings in a 401(k) plan or an individual retirement account or annuity, may want to revisit the possibility of making a Roth election or contributing retirement holdings to a charity. The 4.6% increase in the highest marginal federal individual income tax rate makes contributions to qualified retirement plans more attractive than they have been in the last few years.

Thank you to the Greenbaum Rowe Law Office **Tax, Trusts & Estates Department** for this information

Michael A. Backer, Chair
732-476-2450 | mbacker@greenbaumlaw.com

Thomas C. Senter
732-476-2650 | tsenter@greenbaumlaw.com

Michael K. Feinberg
732-476-2710 | mfeinberg@greenbaumlaw.com