

February 2, 2011

In This Issue:

1. Non-Formal Writings could be Wills under the Revised Probate Law.

2. Discovery Expanded for Speeding Tickets

3. Revised Statute Require Palimony Agreements Writing

4. Elective Share of Spouse if Wife is Not Given Assets in the Will.

Office Phone Number:

(732) 572-0500

www.njlaws.com

Greetings Kenneth Vercammen, Esq.,

1. Non-Formal Writings could be Wills under the Revised Probate Law

SENATE Law No. 708 made a number of substantial changes to the provisions governing the administration of estates and trusts in New Jersey.



The adoption of portions of the Uniform Probate Code attempted to bring greater uniformity to the rules governing testamentary and non-testamentary transfers to make most state laws similar.

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.

2. Discovery Expanded for Speeding Tickets State v Green __ NJ Super. __ A-6199-08T4 11-09-10

In this case, the court decided that a motorist who has been charged with speeding is entitled to discovery respecting,

- (1) The speed-measuring device's make, model, and description;
- (2) The history of the officer's training on that speed-measuring device, where he was trained, and who trained him;
- (3) The training manuals for the speed-measuring device and its operating manuals;
- (4) the State's training manuals and operating manuals for the speed-

measuring device;

(5) the officer's log book of tickets written on the day of defendant's alleged violation;

(6) the repair history of the speed-measuring device used to determine defendant's speed for the past twelve months; and

(7) any engineering and speed studies used to set the speed limit at the section of highway where defendant's speed was measured.

The court also found that the Stalker Lidar speed-measuring device had not been proven to be scientifically reliable and, as such, the results of its operation should not have been admitted during the municipal court proceedings or considered by the Law Division. The court remanded the matter to the Law Division for a plenary hearing on the scientific reliability of the Stalker Lidar. If it is determined to be reliable, then the matter is remanded to the

municipal court for trial after the State has provided all of the discovery required by this opinion.

3. Revised Statute Requires Palimony Agreements to be in Writing.

This law was intended to overturn recent "palimony" decisions by New Jersey courts by requiring that any such contract must be in writing and signed by the person making the promise. More specifically, the law provides that a promise by one party to a non-marital personal relationship to provide support or other consideration for the other party, either during the course of such relationship or after its termination, is not binding unless it is in writing or signed. The law provides that no such written promise is binding unless it was made with the independent advice of counsel for both parties.

4. Elective Share of Spouse if Wife is

Not Given Assets in the Will.

What is my share of my spouse's estate if I elect to take against the Will of my deceased spouse?

In general, a surviving spouse dissatisfied with his or her share under the Will of the deceased spouse may renounce the Will and elect to take his or her statutory share of the testator's entire estate. The surviving spouse is entitled to one-third of the estate provided that at the time of death, the surviving spouse and decedent had not been living separate and apart in different habitations. Generally, the surviving spouse must elect to take his/her elective share by filing a complaint within six months after the appointment of a personal representative of the decedent's estate. □

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.

Whether to elect to take against a Will is a decision that cannot be made without comprehensive information regarding the affairs of the spouses. This is not a matter for self-help and referral to an attorney familiar with estate administration is normally required.

More info at:

<http://www.centraljerseyelderlaw.com/ElectiveShare3B8-1.html>

[Forward email](#)