

# **Estate Planning During COVID**

featuring Kenneth Vercammen  
Certified Municipal Court Trial Attorney

- **Will preparation online without having to travel to law office and follow up consults over phone & online.**
- **Handling probate while surrogate office doors are closed to the public**
- **Keeping your clients and you safe**
- **Other important updates in estate planning**

This practical program is designed to provide the nuts and bolts of estate administration practice to general practitioners, young lawyers, or those who are just seeking to expand into this growing field as the Baby Boomer Generation, which makes up about half our population, continues to age.

This CLE covers..

1. NJ Estate Tax eliminated
2. Wills and problems if no Will
3. Power of Attorney recommendations
4. Living Will & Advance Directive
5. Administering the Estate/Probate/Surrogate
6. Avoiding unnecessary expenses and saving your family money

**1. Will preparation online without having to travel to law office and follow up consults over phone & online.**

Wills now prepared online but without requiring persons to travel into the office.

To assist potential clients and seniors we now offer document preparation remotely and consults. We are concerned about your health and well being and convenience.

1. For Wills, Power of Attorney, Living Wills, please email [Vercammenlaw@njlaws.com](mailto:Vercammenlaw@njlaws.com). We will email the Will interview form.

2. Type response/ Fill in details. Email completed Will Questionnaire back. For Wills Please type up & fill out completely and email to [vercammenlaw@njlaws.com](mailto:vercammenlaw@njlaws.com). Typing name and details is required. Save as word doc or text, not pdf. This form is extremely important. Your accuracy and completeness in responding will help us best help you. All sections and information must be filled out prior to discussing with the attorney. Information cannot be handwritten since computer cannot scan handwriting.

3. Ken V will call to discuss after typed interview form received.

4. After persons pay by credit card online or check we will draft documents and email to clients.

5. Ken V will call to answer further questions

6. Sign documents in front of notary and two witnesses [ spouse ok as witness]. Signing instructions provided. UPS stores continue to be open and have notaries.

Stay safe but still get your important documents done. We strongly recommend all adults have a Power of Attorney prepared in the event they are temporarily incapacitated or hospitalized. We do require interview forms be completed in full and emailed back so we can provide accurate advice. The doctor's office similarly has patients fill out details prior to the consult. We also recommend signing a Living Will with COMBINED ADVANCE DIRECTIVE FOR HEALTH CARE.

The Living Will contains a Power of Attorney for Health Care & Medical Decisions. In signing your Living Will, you will designate an individual you trust to act as your legally recognized health care representative to make health care decisions for you in the event you are unable to make decisions for yourself.

## 2. Probate in 2021 while Surrogate offices closed to the public

Prior to Covid, Executors had to make a personal appearance in the County Surrogate's Office. Due to Covid, County Buildings and Surrogate's offices were closed to the public.

Therefore, to handle probate matters when there is a valid Will we first fill out the Surrogate's Information Sheet.

Then we forward the Surrogate's Information Sheet together with a copy of the Will and copy of Death Certificate.

- Each County Surrogate has its own procedures.
- Then the surrogate is sent by certified mail:
- Original Will
- Original Death Certificate
- Signed Surrogate papers
- Check typically for \$160

We receive paperwork from the Surrogate to be signed by the Executor then we file with the Surrogates:

- Notarized Application for Probate
- Notarized Auth to accept process
- Notarized child support form

Thereafter, the Surrogate will forward your attorney or you with Letters Testamentary. During Covid, no personal appearances in the Surrogate's office. We handle everything by mail, fax & email

If there is no Will, the procedure is more complicated, called an Administration.

All the beneficiaries need to sign a Renunciation. We then fill out, notarize and file the following document with the Surrogate.

- [ X ] Application Administration
- [ X ] Renunciation by all Beni
- [ X ] Administration Affidavit of assets
- [ X ] Administrator Qualification
- [ X ] Power of Attorney Administration
- [ X ] Child support lien notice
- [ X ] acknowledgement receipt of bond info
- [ X ] Original Death Cert

If all beneficiaries will not sign the Renunciation, then an expensive Complaint and Order to Show Cause must be filed requesting a Superior Court Judge to select someone to be the estate Administrator.

**3. Dangers of cheap online forms. Always have your attorney prepare a proper Self- Proving Wills since witnesses often move or pass away.**

The County Surrogates will reject for filing a Last Will and Testament when the Will was not correctly and legally signed and witnessed by independent persons.

The prior 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 affidavit.

The New Jersey Legislature later passed a law to create a type of Will called a "Self-Proving Will." In the improved "Self-Proving Will", the person for whom the Will is made first must sign. Then the two witnesses sign. Then the attorney or notary must sign;

Then the person signs a second time on the self-proving affidavit, then the witnesses sign a second time, then the notary or attorney signs with certain statutory language to indicate the Will is self-proving. Beware of online documents not prepared by an attorney. Never use a cheap form on line. No one tries to do their own electrical work on their home anymore or do their own dental work. Have a professional do it right.

When done properly, the executor does not have to locate any witnesses. This usually saves time and substantial money. If your Will is not "self-proving" or if you are unsure, discuss with an estate planning attorney. Even some law offices don't follow 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. Ken Vercammen's office prepares Self Proving Wills.

#### **4. You should sign an updated legal Power of Attorney- Do not use a form found online.**

A Power of Attorney should always 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). A NJ bank or brokerage company does not have honor a Power of Attorney without the proper NJ language.

Also, if you or your representative move it is a good idea to have a new POA prepared since a bank may give your selected person a hard time if the address on their license is different than the address on the POA.

A Power of Attorney is a written document in which a competent adult individual (the "principal") appoints another competent adult individual (the "attorney-in-fact") to act on the principal's behalf. You usually select a spouse, child or family member. In general, an attorney-in-fact may perform any legal function or task, which the principal has a legal right to do for him/herself. You may wish to sign a Power of Attorney giving your spouse, children or partner the power to handle your affairs if you become ill or disabled. In the absence of a Power of Attorney or other legal arrangement to distribute property if you become disabled, your spouse, family or partner cannot pay your bills or handle your assets. The result can be lengthy and expensive delays. Have a current Power of Attorney prepared. Avoid having to spend \$4,000 on a lengthy guardianship.

#### **5. What to do after signing a Will 2021**

You keep your original Will. Only the original Will can be admitted to probate by the Surrogate. The County Surrogate cannot probate a photocopy of Will or scanned Will. That is why it is important that you know where the original Will is located, and it is in a place the Executor can easily get to it. Buy a fireproof box. Wills are not registered or filed until someone dies.

After documents are signed, for record keeping, it is a good idea to email scanned copies of your documents to family, Executors, Trustee, Guardian and children if appropriate. Also email the Living Will to doctors.

Email a copy of your Power of Attorney to your Accountant, Financial Advisor, and bank. If you have a Living Will, please be sure to give a copy to your Doctor and family. You may also wish to obtain copies of your life insurance beneficiary designation, IRA/ 401k/ SEP designation forms and include in your Will folder. Some clients also prepare a list of online passwords for accounts and digital assets.

## **6. What happens if No Will or cheap online document not done right**

If you leave no Will or your Will is declared invalid because it was improperly prepared or is not admissible to probate:

1. The procedure to distribute assets becomes more complicated and more expensive. It will require all of the children to select someone to be the Administrator, then all the children to sign a Renunciation Affidavit in front of a notary. If all the children do not sign the Renunciation Affidavit in front of notaries, then a Complaint and Order with have to be filed in the Superior Court. Cost over \$3,000. The preparation of a Will for \$400 eliminates these costs.
2. Additional expenses will be incurred and extra work will be required to qualify an administrator-Surety Bond, additional costs often over \$1,000 and extra legal fees.
3. State law determines who gets assets, not you. People who dislike you or don't care about you can get your assets.
4. If you have no spouse or close relatives the State may take your property. Most people who rather have charities or friends get their money.
5. It often causes fights and stress within your family and sometimes lawsuits.
6. A Judge determines who gets custody of children or grand children. A greedy brother or crazy mother-in-law could ask the court for custody.

When loved ones are grieving and dealing with death, they shouldn't be overwhelmed with Financial concerns and estate problems if there is no Will or not prepared or signed properly.

Who don't you want to receive your assets?

**7. Sign a Living Will /Advance Directive in the event you become permanently unconscious, are in a terminal condition or serious irreversible illness**

A Living Will is your written expression of how you want to be treated in certain medical conditions. This document will permit you to express whether or not you wish to be given life-sustaining treatments in the event you are terminally ill or injured, to decide in advance whether you wish to be provided food and water via intravenous devices ("tube feeding"), and to give other medical directions that impact the end of life.

"Life-sustaining treatment" means the use of available medical machinery and techniques, such as heart-lung machines, ventilators, and other medical equipment and techniques that will sustain and possibly extend your life, but which will not by themselves cure your condition. In addition to terminal illness or injury situations, NJ will permit you to express your preferences as to treatment using life-sustaining equipment and/or tube feeding for medical conditions that leave you permanently unconscious and without detectable brain activity.



*Example:*

**A. Fluids and Nutrition.**

I request that artificially provided fluids and nutrition, such as by feeding tube or intravenous infusion Most people initial #1

1. \_\_\_\_\_ shall be **withheld or withdrawn** as "Life Sustaining Treatment."
2. \_\_\_\_\_ shall be **provided** to the extent medically appropriate even if other "Life Sustaining Treatment" is withheld or withdrawn.

**B. Directive as to Medical Treatment.**

I request that "Life Sustaining Treatment" be **withheld or withdrawn** from me in each of the following circumstances: ]

**(Most people initial 1-4 )**

1. \_\_\_\_\_ If the "life sustaining treatment" is experimental and not a proven therapy, or is likely to be ineffective or futile in prolonging my life, or is likely to merely prolong an imminent dying process;
2. \_\_\_\_\_ If I am permanently unconscious (total and irreversible loss of consciousness and capacity for interaction with the environment);
3. \_\_\_\_\_ If I am in a terminal condition (terminal stage of an irreversibly fatal illness, disease, or condition); or
4. \_\_\_\_\_ If I have a serious irreversible illness or condition, and the likely risks and burdens associated with the medical intervention to be withheld or withdrawn outweigh the likely benefits to me from such intervention.

\_\_\_\_ None of the above. I direct that all medically appropriate measures be provided to sustain my life, regardless of my physical or mental condition. [This means you want to be kept alive with tubes, none pick this]

If you or anyone you know needs an updated Will, Power of Attorney or Living Will, please have them fill out our confidential interview form and schedule a consult. Call the Law Office of Kenneth Vercammen at 732-572-0500 to schedule an in-office consultation.

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## 8. 2021 Federal estate tax rate changes for 2021

the threshold for federal estate taxes is \$11.7 million, which is up slightly from \$11.58 million in 2020. For married couples, this threshold is doubled, meaning they can protect up to \$23.4 million in 2021

**Federal Gift Tax** in 2021, you can give up to \$15,000 to someone in a year and generally not have to deal with the IRS about it. If you give more than \$15,000 in cash or assets (for example, stocks, land, a new car) in a year to any one person, you need to file a federal gift tax return.