

JANUARY 2022 NEWSLETTER

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ESTATE PLANNING: CAN YOU DISINHERIT YOUR CHILD?

1. AWARDS:

Pozzuolo Rodden Pozzuolo are pleased to announce that they have been nominated for the eighth annual Legal Elite Awards by New World Report. Recognizing that the legal industry remains one of the most fiercely competitive sectors in the world, the stated purpose of the award is to again recognize the dedication, tenacity and commitment of the region's finest legal firms and pioneering individuals.

2. BLOGS:

The following are a few of the business, tax, employment, estate planning and business litigation blogs posted on our main website www.pozzuolo.com:

- a. Family Business and Your Estate;
- b. The Best Way To Transfer A Business Within Family; and,
- c. The Use Of A Will In An Estate Plan.

Please visit our website www.pozzuolo.com for more information on these and other relevant business, tax, estate, business litigation and employment topics.

CAN YOU DISINHERIT YOUR CHILD?

While you cannot completely disinherit your spouse under Pennsylvania and New Jersey law (except in certain narrow circumstances such as under a pre- or post-nuptial agreement), you can disinherit your child(ren). The general rule is that in all states except Louisiana, children can be disinherited. In fact, the Supreme Court of Pennsylvania has specifically held that “[i]t has always been the law of Pennsylvania that a parent does not have to leave any of his property to any of his children, irrespective of whether he likes them or dislikes them, or hates them, and he does not have to disclose his reasons for disinheriting them. Sommerville Will, 406 Pa. 207, 214, 177 A.2d 496, 499 (1962).

In order to disinherit your child(ren), you should specifically state that you are disinheriting your child(ren) in your Will with clear, plain and express language stating your intention to disinherit your child(ren) by name. Simply leaving one or more of your children out of your Will can create ambiguity and an inference of a mistake, oversight or error and may not be interpreted in accordance with your desire to disinherit your child(ren) should that child contest your Will after your death. Thus, it is strongly recommended to include a clause that mentions your child by his/her full name and simply state, “I have intentionally made no provision for my child, John Doe.”

Many estate planning experts, including this firm, recommend that it is not best to give a reason for the disinheritance. If the reason is given and it is proven to be a mistake of fact then there could be a dispute about the validity of the disinheritance. In contrast, certain other estate planning experts suggest if there is no acrimony in the parent-child relationships, it may be helpful to include an explanation of why your child is being disinherited. For example, you could explain that you have provided extensive financial support for your successful, independent child during your lifetime so you do not feel the need to leave them any of your assets after your death.

Nonetheless, what is important is the Pennsylvania Supreme court case of Newlin which stated the pertinent, critical presumption and a rule of construction that a parent does not intend to disinherit children except by clear and plain language. In re Newlin Estate, 80 A.2d 819, 823 (Pa. 1951), citing a long line of cases. (For purposes of complete understanding is the New Jersey ‘Omitted Child’ law which states if someone fails to provide in his or her Will for any children born or adopted “AFTER” the Will is made, the “omitted after born or after adopted child” can be entitled to an intestate share of the estate.)

One final issue to consider is whether your reason for declining to leave any of your estate assets to a certain child is that the child is not capable of making wise, judicious, rational financial decisions and you are concerned that the child would waste any assets left to him/her. If this is the case, you might want to consider creating a trust for that child as part of your estate plan instead of disinheriting him/her. With a trust, you have the power to provide an inheritance to your child’s health, support, maintenance and education and be certain that the assets are managed by a trustee and not your child.

Kindly contact our office to speak with one of our Estate Planning attorneys to discuss the specific facts of your situation and to create an Estate Plan tailored to your needs.

This newsletter is courtesy of Pozzuolo Rodden Pozzuolo, P.C.

To subscribe, unsubscribe, or for any questions, please contact us at INFO@POZZUOLO.COM.