



## The DeGennaro Law Firm Family Law Newsletter

This family law newsletter is provided by the DeGennaro Law Firm to help educate individuals and families that wish to understand and navigate through the myriad of legal concerns that will confront them in both life and death.

### **Your family is fighting over control of your assets, and you are not even dead yet.**

As noted in the March, 2013 issue of the Michigan State Bar Journal,

We live longer, may marry more than once, and will advance into old age with a good chance of being physically and emotionally impaired, and with our adult children being geographically and emotionally distant.

Under the best circumstances, there will be conflict among the adult children (and step-children) over the management of the health care needs of an impaired parent, and the management of his or her financial resources. Under the worst of circumstances, there will be overreaching, undue influence, and even exploitation leading to internal conflict, feuding, and litigation that will often leave the families permanently scarred (and broke). And, with the court deciding who should manage your affairs if you become incapacitated.

**When a decision regarding your welfare has to be made, will the decision be made with your best interests in mind, or will it be made with your adult children's future inheritance in mind?**

**So, what to do?** Use a power of attorney and/or a living trust to name the person(s) you want to manage your health care needs and financial affairs if you become incapacitated. Don't let the court make this decision for you.

### **What is mine is mine; what is yours is yours. Don't be so sure.**

Michigan is not a "community property" state, that is, a state where marital property is divided equally upon divorce. In Michigan, the courts have wide discretion in dividing marital property. Courts are not bound by any precise mathematical formula and will consider a number of factors in dividing property including: duration of the marriage, contributions of the parties to the marital estate; age and health of the parties; the earning abilities of the parties; and misconduct of a party.

**But, not all assets are "marital" assets.** There is a legal difference between "separate property" and "marital property". Separate property, such as an inheritance or a personal injury award, is generally not considered part of the marital estate subject to division in a divorce proceeding. However, your separate property can become marital property when you **commingle** the property with your marital assets, for example, placing your inheritance in a joint bank account or using the inheritance to purchase a marital asset such as a home.

**What to do? If you want to keep your property separate and minimize the court's discretion in dividing property, don't commingle your assets, and think "prenuptial".**

## Your Prenuptial Agreement, don't leave home without it.

Fifty percent of first marriages end in divorce. Within three years of being divorced, most divorced people will remarry, and two-thirds of second marriages will fail. Where a second, marriage, or a third marriage, or even a first marriage for that matter is on the horizon, you should be considering a prenuptial agreement.

Why have a prenuptial agreement? A prenuptial agreement allows you to resolve issues of spousal support (the dreaded alimony) in the event of divorce, and protect the property you bring into the marriage by spelling out what property you deem separate, thus not subject to division upon divorce.

And here is an added plus in having a prenuptial. With second and third marriages and blended families becoming commonplace, your prenuptial agreement can answer the "What happens to me if you die?" question. Your prenuptial can provide for your surviving spouse and, at the same time, provide for your children from a prior marriage.

## Did you know?

- 1) That a sender of a text message could be liable for a car accident if the accident is caused by texting and the sender knew that the driver would review the text while driving and thus would be distracted.
- 2) When you leave your keys in a car and it's stolen, you can be liable for injuries sustained by a third party if the joyriding thief ends up in an accident?
- 3) In Michigan, a graduate degree is a marital asset and the court can consider its value in awarding property upon divorce.
- 4) Michigan is required by federal law to seek recovery for Medicaid payments for nursing home services, home and community based services, and related hospital and prescription drug services of a deceased recipient who was 55 or older when the assistance was received. However, assets held in a revocable trust and assets that pass upon death outside of the probate process, such as assets jointly owned, are generally not subject to recovery by the state.

## Complimentary Consultation with Living Will

**For a complimentary consultation, please contact the DeGennaro Law Firm at 248.350.0404, or email [louis@degennarolaw.com](mailto:louis@degennarolaw.com).**

**As part of your complimentary consultation you will receive a completed Living Will/Medical Durable Power of Attorney.**



Lou DeGennaro is a member of the estate planning division of the Michigan Bar Association. He is dean emeritus and retired Professor of Legal Studies at Lawrence Technological University. He holds a doctorate of jurisprudence from Michigan State University College of Law (1968). His post-law studies were at Harvard (1979) and Cambridge, England (1985). As an educator and practitioner for over forty years, he has lectured extensively on wills, trusts, probate administration and estate planning.