



A Family Law Newsletter from the De Gennaro Law Firm

The Family Law Newsletter is provided by the De Gennaro Law Firm to help individuals and families navigate through the myriad of legal concerns they will confront in both life and death.

So you want to disinherit your spouse. Forget it. It "ain't" going to happen. Your Child? Yes, but do it right.

Your marriage turned out to be a life sentence - you could only get out with bad behavior. Perhaps it was a second or third marriage of short duration and you want to disinherit your spouse or leave her a small amount in your will.

Sorry, it's not going to happen. Why? Because in Michigan, your spouse has a "right of election". Your spouse can choose to accept the terms of your will, or choose to receive one half of the share of your estate as if you died without having made a will. And, if the spouse is a widow, she can elect to take her "dower" interest in your real estate. (How will the courts apply the "dower" interest rule in same-sex marriages?)

So what can you do? Your spouse can waive his or her right to choose by signing a prenuptial or post-marriage agreement. A [prenuptial agreement](#) is a must for second, third marriages, or for late-in-life marriages, especially where there are children from a prior marriage.

OK, so I can't disinherit my spouse, but can I disinherit a child of mine? Yes, but you need to do it right. Remember, for a will to be valid, you have to have sufficient legal and mental capacity at the time you made your will. This means, at the minimum, that you know the "objects of your bounty", that is, you need to know who are your heirs when your will was made. The failure to mention your child in your will could raise an argument that you lacked capacity to make a valid will and can be the basis for a costly will contest.

So what should I do? First, do not leave your child a nominal sum (\$1.00 or \$10.00) in your will just to establish that you know who are your heirs. It could cost your estate a lot of money* just to locate the prodigal son or daughter to leave them a few dollars. Instead, you can disinherit your child by including a few nice words in your will such as "I remember my son or daughter with love and affection, but I choose to leave him or her nothing under this my Last Will and Testament".

**The law firm probated a \$2M dollar estate that cost thousands of dollars in additional fees to distribute \$10.00 to an heir named in the will. As you might have thought, the unhappy heir was not very cooperative.*

A word of caution. If you have an heir who is expecting an inheritance larger than intended, you may want to detail in your will why someone is getting substantially less or more than another. Otherwise, the disgruntled heir's inheritance might be used to fund a will contest.

So you want to start a business?

You have a brilliant idea that you can't wait to market. Perhaps you have a life-long dream and passion to work for yourself. Although you may think it could never happen to you, almost half of new businesses fail within the first two years of operation. Those are not good odds when investing significant time and money in launching your business. There are many reasons why businesses fail so often - lack of adequate funding, failure to adequately assess the market, lack of adequate skills to start and manage a business, and being blinded to the flaws in your idea or product.

The law firm's [Small Business Consulting \(SBC\) group](#) will tell you that a major reason for a start-up's failure is the absence of a realistic business model. Your passion can easily get in the way of reality, so you prepare a business plan with rosy scenarios, only to suffer a dose of reality after launch.

So what to do? Besides turning to trusted professional advisors to honestly assess your objectives, goals and business model, make sure you have insulated and isolated your individual assets by incorporating your business, or by creating a Limited Liability Company (LLC). But beware, a landlord or lending institutions will often look for you to guarantee a debt in the event of the company's insolvency or bankruptcy. Try to avoid this if possible as guaranteeing a debt will expose your personal assets to claims of your business creditors.

Did you know?

1) That trespassers have rights too. Use of deadly force to protect your property, such as keeping a killer poodle on the premises, is a "no-no" for even adult trespassers. And, a "No Trespassing" sign won't protect you when it comes to children trespassers. Children see a "No Trespassing" sign as an invitation to enter the premises. When there exists an artificial condition on the property (think swimming pool), such property could be an "attractive nuisance". And, when it comes to your invited guests, the courts have ruled that a property owner must look for and warn of known danger.

2) That when your car is valet parked, or you leave the keys with an attendant in a parking structure, the parking lot owner will be responsible for any loss or damage to your car, even though there are signs posted or there is language printed on the back of the parking stub that says "Not Responsible for Loss or Damage".

Complimentary Consultation with Living Will

For a complimentary consultation, please contact the DeGennaro Law Firm at 248.350.0404, or email 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.

This newsletter and any description of current law and its application are not intended as legal advice. Readers are directed to seek individual consultation with regard to their particular concerns.