

# POLOW, POLOW & MAHONEY - ATTORNEYS AT LAW

## THE LAW AND YOU - VOLUME 10, ISSUE #26

**\*\*Personal Injury\*\*Auto Accidents\*\*Real Estate\*\*Other Legal Services\*\***

### IN BRIEF

#### Information You Should

#### Know About Auto Accidents

· The State of Vermont Motor Vehicle Department requires that all motor vehicle operators must file a written accident report with their department within 72 hours after an accident takes place when:

a. The total damage to the vehicles involved and/or any other property exceeds \$1,000; or

b. Anyone suffered an injury no matter how slight it may be.

· It is the policy of the Vermont State Police that officers will not investigate accidents that have less than \$4,000 in damages, unless injuries are involved.

· The law enforcement officer's report can either be obtained from the local law enforcement agency such as a town police department or county sheriff or the Department of Motor Vehicles in Montpelier.

· If you need to submit an accident report to the Motor Vehicle Department, you can pick up a State of Vermont accident report form at any police department.

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**INFORMATION**

**REGARDING WILLS**

**Q:** *What happens if I die without a will?*

**A:** If you do not make a will or use some other legal method to transfer your property when you die, state law will determine what happens to your property. This process is called "intestate succession." Your property will be distributed to your heirs according to a statutory formula. The formula in Vermont may distribute your property differently than you would like. Also, in the absence of a will, a Probate Court will determine who will care for your minor children and their property in the event there is no surviving parent or if the other parent is unavailable or unfit.

**Q:** *What are the legal requirements for drafting a valid will?*

**A:**

- Age - to make a will, generally you must be 18 years of age or older.
- Mental State - you must be of "sound mind" to make a valid will. It is not a rigorous requirement. The standard interpretations require that you:
  - know what a will is and that you are making one;
  - understand the relationship between yourself and those persons who you would normally provide for, such as a spouse or children;
  - understand what you own; and
  - be able to decide how to distribute your property.

In reality, a person must be pretty far gone before a Court will rule that he or she lacked the capacity to make a valid will.

· A will can also be declared invalid if a Court determines that it was procured by fraud or undue influence. This usually involves some individual manipulating a person of unsound mind to leave all of their property to the manipulator. Will contests based on these grounds are quite rare.

**Q:** *What will your will look like?*

**A:** You will not be around to vouch for your will's validity when it takes effect. Because of this stark but obvious truth, every state has laws designed to make sure that nobody can pass off a phony document as your will after your death. Most states' rules are similar.

· Wills must generally be type-written or computer generated. Although handwritten wills are sometimes valid, they are not a good idea.

· The document must expressly state that it is your will.

· A will typically contains a clause or clauses regarding the disposition of your property.

· You must appoint an executor, also called a personal representative. This person is responsible for supervising the distribution of your property after your death and making sure that your debts and taxes are paid. If you die without a will and you have property that needs to be probated, a Court will appoint someone who is called an administrator.

**Q:** *Can I use my will to name somebody to care for my young children in case my spouse and I both die suddenly?*

**A:** Yes. If both parents of a child die while the child is still a minor, another adult, called a personal guardian, must step in. You and the child's other parent can use your wills to nominate someone to fill this position. To avert conflicts, you should each name the same person. The guardian will be responsible for raising your children until they become legal adults. Of course, you should have complete confidence in the person you nominate, and you should be certain that your nominee is willing to accept the responsibility of raising your children should the need actually arise. Here are some factors you might want to consider when choosing a personal guardian:

· Is the prospective guardian old enough? He or she must be at least 18 years old.

· Do you and your children have confidence in the prospective guardian? Does your choice have a genuine concern for your children's welfare?

· Is your choice physically able to handle the job?

· Does he or she have time?

· Does he or she have kids of an age close to that of your children?

## **In Case of Injury**

When you, your friends, family members or fellow workers become injured, they may need an attorney. Please have them call us. We will be happy to help with a free consultation.

Q:

A:

Q:

A:

Q:

A:

## **The Law and You**

*The Law and You* is published as a service to our clients. Articles contained in *The Law and You* should be viewed as summaries of the law and not as substitutes for legal counsel. You should not act on any of the information contained in this newsletter without further, specific legal consultation.

Q:

A:

Q:

A:

***We welcome your comments.***

- Can you provide enough assets to raise the children? If not, can your prospective guardian afford to bring them up?
- Does the guardian share your moral beliefs?
- Would your kids have to move?

*Witnesses?*

You must date and sign the will in the presence of three witnesses in Vermont. In Vermont, the witnesses watch you sign your will as well as each other's signature. Your witnesses cannot be named to receive property in your will.

*Notarization?*

Contrary to what many people believe, wills do not have to be notarized to be valid. However, it is extremely important that someone conduct the signing of the will to make sure that all requirements of a valid will are met. Typically, the lawyer drafting the will takes care of this.

*What should I do with my will after I sign it?*

After you die, your executor is responsible for seeing that your wishes are carried out as directed by your will. So wherever you choose to keep your will, make sure your executor and at least one other person you trust knows where to find it. In Vermont, a good place to store your will is at the Probate Court in the county in which you reside. You will be charged a \$10.00 storage fee. That way, your will is already at the court when it needs to be probated. It will be necessary to retrieve your will if you move to another county or state.

*What if I move?*

Generally, a will is valid in any state where you die, if it was valid under the laws of the state or country where you were "domiciled" when the will was made. Your domicile is the state where you have your principal home. You can have only one domicile.

If you move to another state after signing your will, you should review your will in the light of the state's new laws, especially property ownership laws that apply to married couples.

*Can I leave property to young children in my will?*

Children under the age of 18 can inherit property. However, an adult must manage it if it is anything valuable. You can use your will to name someone to manage property you leave to minors, thus avoiding the need for a more complicated court appointed guardianship. There are many ways to structure a property management arrangement. Many times a trust is the best solution.

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