

KHLAW NEWS

The Edge on Today's Top Legal News

OCTOBER

2007



October's Creepy Contents...



Do You Know...?



Spooky Birthdays



Welcome Angela Nichols Philipp



Get What You Want (pt. 1)



Happy Halloween!



BOO-TASTIC
BIRTHDAY
WISHES FOR
RENEE NEHRING!
10/27

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Do You Know Who Your Beneficiaries Are?

Who will get your assets at your death? Do you think you know? You may not. While you probably know who is listed in your Will or Trust, most of us have significant value in assets that are not controlled by either a Will or Trust.

Examples of assets not governed by your Will or Trust are:

- Property held in joint tenancy with right of survivorship
- Life insurance
- IRAs, 401(k)s and other retirement plans

Joint tenancy property goes automatically to the surviving joint tenant(s). So, if you own property jointly with your sister, the jointly held property will go to her even if your Will or Trust gives everything to your spouse.

Life insurance goes to whomever is named as the beneficiary of the policy, even if it is owned by someone else. So, if you own the policy and have named your daughter as beneficiary, the death benefit will go to your daughter. Again, as with joint tenancy, this will occur even if you have given somebody else, like your spouse, everything in your Will or Trust.

Perhaps the most overlooked (and important) asset is the retirement plan (IRA, 401(k), etc.). Americans have trillions of dollars in retirement plans. The beneficiary of the retirement plan is whomever you specify in the beneficiary designation for the plan. Like joint tenancy and life insurance, it does not matter if you named someone else in your Will or Trust. So, you could have named your mother in your retirement plan and she would get those assets, even though you've named your spouse in your Will or Trust.

A new wrinkle is that, even though you have named a beneficiary, at least one mutual fund company may override that designation for you. Vanguard Group recently announced that it is requiring its customers to name the same beneficiary for all accounts of the same type. So, if you have three IRA accounts with Vanguard, each naming a different beneficiary, you have to come up with *one* designation. If you do not, Vanguard will do it for you by respecting the most recent beneficiary designation on any of the accounts of that type as the beneficiary designation for *all* the accounts of that type. Let's say you have two children and you set up two IRAs with Vanguard, each child as the beneficiary for one of the substantial accounts. Then, your brother runs into some difficulty, so you set up a new small IRA with him as the beneficiary. Under Vanguard's new rules, your brother would be the beneficiary of *all three* accounts. Many professionals and Vanguard clients are waiting to find out if Vanguard's new practice will hold up in court.

As you can see, it is important to verify beneficiary designations periodically to ensure those assets will go where you intend. A qualified estate planning attorney can help you coordinate your beneficiary designations with your entire estate plan to ensure that your assets get distributed how and to whom you intend.

Attorney Michelle T.L. Hernandez has extensive legal experience in the area of estate planning and is an active member of the American Academy of Estate Planning Attorneys. To schedule your free consultation today, simply call (800) 431-9776.

Welcome Attorney Nichols Philipp!

Please help us in welcoming the newest member of our team, Attorney Angela Nichols Philipp. Angela joins us at our Baraboo office with six years of experience in many different areas of law such as family law and civil litigation. Not only is she a qualified attorney, she is also a certified mediator and serves as Guardian ad Litem in many family law cases. Outside of the office, she is active in the community through participation in local volleyball and softball teams and as Assistant Cheerleading Coach for St. John's Lutheran School. This fall, she and her daughter will also be participating in the Sound of Music with the Baraboo Theater Guild. Welcome Angela!



Get What You Want Out of Your Divorce with Advanced Planning (part 1 of 2)

"He/She got *everything* in the divorce." We've all heard it before, but in reality, the division of assets, debts, rights and responsibilities is likely to be very fairly similar for both parties. For that reason alone, it is important for people facing a divorce to establish clear priorities, and figure out what is really important to them.

As your divorce begins, it is important to sit down and identify the issues that are likely to arise in your divorce. Every divorce is different and only you know what issues are important to you. Make a list of assets. Are there any particular assets that you want? If so, spend some time thinking why it is so important to you to have that particular asset. By doing so, you may realize that it is not nearly as important as you first thought. Establishing your priorities as to what you want to keep and what you can live without will help prepare you and your attorney for getting what you want without spending unnecessary time and money in the process. If an agreement can be reached, your attorney should be able to negotiate a fair and reasonable settlement or, in the alternative, receive similar results from the court.

One way to look at a divorce is to say that each asset held by the spouses, whether jointly or individually, is a card and all the cards must be placed on the table face up to be divided. Through the divorce process, each spouse takes certain cards and there are any number of ways that these cards can be allocated.

If you have children, the care and custody of the children is likely to be a substantial factor in your divorce. Even if one parent is willing to concede custody of the children, there will undoubtedly be further issues. These may include, but are not limited to, a visitation schedule for the non-custodial parent, division of school vacations, the amount of child support to be paid, the division of educational expenses, and the decision making process for child activities such as sports and summer camps.

The division of assets is another key component. Though the division may be governed by a prenuptial agreement, if one exists, it includes dividing major items such as real estate, bank accounts, stocks, pensions and other retirement plans. Here is an area where establishing priorities is crucial. Are you concerned more by current cash flow than future savings? If so, you may want to sacrifice some retirement dollars in a negotiation in order to take more cash today.

Perhaps your main objective is to remain in the marital residence. In many divorces, the house is the largest asset of the parties. This means that whichever spouse stays in the home is most likely going to have to offset that by giving the other spouse a larger share of the remaining assets. Is that a tradeoff you are comfortable with? Or would you rather sell the home and divide the proceeds?

Next month we'll address other issues, such as insurance and taxes, as well as the importance of give and take in order to help you get what you want from your divorce.

If you or someone you know needs help during the difficult process of a divorce, please call Attorney Mark L. Krueger at (866) 455-2993.

Monstrous Michelle T.L. Hernandez

Menacing Mark L. Krueger

*Have a Spookily Safe Halloween from
Krueger & Hernandez SC*

Tackling Kara Sanger

Sinister Shelley Craker

Awful Angela Nichols Philipp

Cruel Kera Palmer

Scary Stacie Ray

Devilish Dera Johnson

Petrifying Penny Bykowski

Ghoul-ish Gregory Fumelle

Hair-Raising Renee Nehring

Eye-Popping Eileen Shanks

