

Law Offices of Mark D. Petti

LEGAL NOTES



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We are a general law firm
specializing in:

- Personal Injury
- Auto Accidents
- Family Law
- Probate Law
- Civil Litigation
- Criminal Law
- Wills, Trusts & Estates
- Real Estate Law
- Real Estate Closings

DIVORCE: Keys to winning custody

Parents lose custody cases for the darndest reasons. In close cases, little things can mean the difference between a favorable report and adverse ruling.

Judges, Family Service Officers and/or Guardians ad Litem make decisions about custody based upon limited facts, by viewing families as if they are under a microscope, hoping to discover clues which will show which parent is best suited to care for the children. During this process, it is easy to make mistakes which appear to be minimal but which can greatly impact the results of a custody investigation. This article explores some simple steps which can be taken to increase the chances that the court will be less likely to find fault with you.

First, always, to the greatest extent possible, show respect to the court, the custody investigator, the attorneys, your spouse and to any Guardian ad Litem. Being perceived as having a bad attitude can be detrimental to your case.

Showing respect can be manifested in many ways. Dress neatly with clean clothing and proper personal hygiene. Dress and groom the children, too. Show up on time for your appointments and court dates. Try not to argue or show anger when you are in court, or in the family service office.

Obey all court orders to the greatest extent possible. If you disobey a court order or fail to follow the recommendation of a Guardian ad Litem, you had better have a very good reason for doing so.

Don't do or say anything in front of your children or your spouse or ex-spouse which could embarrass you if they found their way to the ear of the judge. Children are like sponges: they soak up everything you say and do and mimic it. If you swear in front of the kids, they will probably swear in front of others. If you say bad things about the other parent, a child will remember what you

said and tell a family services officer and/or a Guardian ad Litem when asked.

When the children are around, avoid excessive use of alcohol, stay away from illegal drugs, drive with your seat belt on and keep the kids belted and in appropriate child protective seats. Go the speed limit. Don't risk getting a DWI during your custody or divorce proceeding. Even if the kids aren't around, the other side will find out when you're in jail and you'll have a hard time telling the court that you don't have an alcohol problem.

Be an active parent. Visit the children as often as possible if you don't have primary physical custody. Walk the talk by keeping your word. If you make a promise to your kids, spouse, the family services officer, Guardian ad Litem or the court, follow through with it. Go to school functions. Spend time with the kids. Call them. Praise them. A parent who desires custody must do so by both words and actions. Simply asking for custody is not enough.

Many of the above steps are simple and not time consuming. Some are more involved. All are designed to help you put your best foot forward and, in the long run, become a better parent. You'll be rewarded for that, in ways that go far beyond what any judge ultimately decides.

For more information or an appointment, please call our office at 508-586-4466 or, if you prefer, send us an e-mail at mdpetti@pettilaw.com and our office will contact you.



This newsletter provides general information and is designed to keep you up-to-date with changes in the law. It does not constitute legal advice.

Please note that making a phone call or sending an e-mail does not create an attorney-client relationship; this requires a written agreement.

Please do not e-mail any confidential information until an agreement is signed; at that point, we can exchange confidential information freely.



The Homestead Act



MASSACHUSETTS GENERAL LAWS CHAPTER 188, SECTION 1-10

What is a Declaration of Homestead/Homestead Protection?

An Estate of Homestead is a type of protection for a home or real estate, in the form of a document called a "Declaration of Estate of Homestead". It allows homeowners in Massachusetts to protect their property up to three hundred thousand dollars (\$300,000) of the value per residence, per family.

How am I protected?

The real property which serves as an individual's principal residence upon filing a declaration of Homestead, shall be protected against attachment, levy on execution or sale to satisfy debts to the extent of three hundred thousand dollars (\$300,000) per residence, per family.

Is there anything I will not be protected from?

The following are exempt from the Homestead Law:

** federal, state and local taxes, assessments, claims, and liens;

** first and second mortgages held by financial institutions or others;

** an execution issued from the Probate Court to enforce its judgment that a spouse pay for the support of a spouse or minor children;

** where buildings on land not owned by the owner of a Homestead estate are attached, levied upon or sold for the ground rent of the lot whereon they stand.

** upon an execution issued from a court of competent jurisdiction to enforce its judgment based upon fraud, mistake, duress, undue influence or lack of capacity.

If you filed a Declaration of Homestead prior to the increase in coverage of October 25, 2000, your coverage amount automatically increased to \$300,000.

For more information or an appointment, please call our office at 508-586-4466 or, if you prefer, send us an e-mail at mdpetti@pettilaw.com and our office will contact you.

DIVORCE: DIVISION OF RETIREMENT BENEFITS (QDRO)

During marriage one or both spouses may earn retirement benefits. In Massachusetts, retirement benefits earned during a marriage are considered to be marital property, capable of being divided by the court in a divorce proceeding. If you are in the process of obtaining a divorce or a dissolution resolving your divorce it may involve having a judge approve of a legal document called "QDRO" (pronounced quad-ro). A QDRO stands for "qualified domestic relations order".

Retirement funds normally cannot be distributed to non-participants in the plan. This is why congress created the QDRO concept: to allow former spouses to collect their share of the marital portion of retirement benefits.

A QDRO is an order which requires the retirement plan to distribute benefits to what is called an "alternate payee". QDRO's must be prepared carefully so that they comply both with Federal laws and with the specific language of the individual plan in which the retirement funds are located.

There are many different retirement plans, including ERISA qualified plans, Government plans, Keogh plans, SEP's and IRA's. For more information or an appointment, please call our office at 508-586-4466 or, if you prefer, send us an e-mail at mdpetti@pettilaw.com and our office will contact you.



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Missed by many.

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August 18, 1990—2004



HISTORICAL DAY IN MASSACHUSETTS

SAME-SEX MARRIAGE RULING RAISES MANY LEGAL ISSUES FOR COUPLES.



On May 17, 2004, Massachusetts became the first in the nation to allow same-sex marriages. The prospect of same-sex marriage raises many legal questions for couples and others.

- What happens if a gay couple marry in Massachusetts and then move to another state? Some 38 states now have “Defense of Marriage Acts” that refuse to recognize other states’ same-sex marriages, and in the states that do not have such an Act, the law is still unclear. So it’s not certain what marital rights a couple would have if one or both moved to another state. Nor is it clear how they could go about getting a divorce or resolving custody or support issues.
- If you itemize your deductions on your federal income tax return, you can take a deduction for the state income taxes you’ve paid. But this will be very confusing if gay couples can file a joint state tax return as “married”, but can’t file a joint federal return as married because the federal government doesn’t recognize their marriage. How much of the joint state taxes can each spouse take credit for on his or her separate federal return?
- Gay couples who want a prenuptial agreement will have to make provisions for many different eventualities, such as what will happen if they move to a state that doesn’t legally recognize their marriage.
- If a gay couple have a child, with only one parent being a biological parent, what happens if they divorce? Does the biological parent have a greater right to custody?
- Massachusetts estate tax laws will be out of sync with federal laws, further complicating estate planning for gay couples.

For more information or an appointment, please call our office at 508-586-4466 or, if you prefer, send us an e-mail at mdpetti@pettilaw.com and our office will contact you.

Briefly Speaking

Mark D. Petti, Esq.

Dear Reader:

Traditional ways of practicing law are no longer sufficient to serve today’s clients. Clients are informed, internet savvy and demand the best resources available. Now, more than ever, lawyers need to act with the best information, the best technology and access to the best group of legal experts in the market. When you choose our law office to represent you, you are choosing a top-notch Brockton law firm with strong relationships and legal associations with major Boston law firms. We are moving our law practice forward with the skill, strength, confidence and experience today’s clients demand to meet their needs.

Our philosophy has resulted in our successful representation of many clients, including in one of Massachusetts’ largest Personal Injury cases of 2003.

We are defined not only by the level of success for our clients but also the level of service that we provide. This means providing comprehensive, compassionate services that foster communication among attorneys and clients. As a result, we frequently have repeat clients as well as new clients referred to our firm because of the positive and dedicated service all of our clients receive.

If you have any questions about a legal matter that is important to you, please feel free to call me anytime. Have safe and enjoyable summer.

Mark D. Petti

PROTECT THE ONES YOU LOVE

ESTATE PLANNING

If you’re like most people, a Will, Health Care Proxy and Living Will Declaration could be the most important legal documents that you ever sign.

A Will provides the legal mechanism for disposing of property upon death in a way that recognizes your wishes and the needs of your survivors, while minimizing taxes. Without a Will, the courts—and not you—decide what happens to your assets. They can even decide what happens to your children.

A Health Care Proxy and Living Will Declaration involves, even more importantly, planning for the handling of affairs in case of disability, and the deeply personal medical choices to be made as life nears its end.

Our office is committed to providing excellent and compassionate legal work accompanied by outstanding client service in all aspects of wills, health care proxies, living trusts, other trusts, and probate. We are dedicated to the high quality of our work and to giving each of your legal matters respectful, thoughtful care

For more information or an appointment, please call our office at 508-586-4466 or, if you prefer, send us an e-mail at mdpetti@pettilaw.com and our office will contact you.



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Complimentary Issue

«First Name»«Last Name»
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«City», «State» «ZIP Code»

Thanks for the Referrals

Our clients *are* our business. We are grateful that many of our clients and friends feel confident in recommending our firm. The best source of our business is word of mouth.

Unfortunately, when many people need a good lawyer, they do not know where to turn. If you or someone you know needs legal help, call us.



AUTO ACCIDENTS

There are approximately 12 million car accidents in the United States each year. It is a disturbing fact that you or someone you know is likely to be involved. Take a few minutes to read the Auto Accident Checklist of do's and don'ts if you are involved in an accident.



AUTO ACCIDENT CHECKLIST

- ✓ STAY CALM. Move yourself and your passengers out of harms way. Call the police.
- ✓ Assist anyone who is injured. Call for an ambulance if necessary.
- ✓ Get the name, address, phone number, and license number of the other driver(s) and car(s). Exchange insurance information.
- ✓ DO NOT discuss the accident (except with police), but DO make notes of anything the other driver(s) says about the accident.
- ✓ Get the names, addresses, and phone numbers of any witnesses.
- ✓ Get photographs of your vehicle, contact your insurance company and write down everything you remember about the collision ASAP.
- ✓ Contact our office to discuss your legal options.

Q & A

ANSWERS TO
YOUR LEGAL
QUESTIONS

Q. My mother and my oldest sister's names were on the deed to my mother's house. My mother passed away and her Will states that the home should be split equally between her 3 daughters. However, my oldest sister says that despite what is written in the Will, the house is 100% hers because she is the sole name left on the deed. What is legally correct?

A. This question comes up often and illustrates how important it is to use the right legal language on a deed in order to preserve your survivorship rights or your future interest in the property.

Right of survivorship for a deed depends on how the property was held. While alive, each party holds an undivided interest in the property. Title is described on the deed. If title was held as "joint tenants" then the interest of each party is conveyed automatically to the survivor. The interest of a joint tenant terminates at death. If the interest is "tenants in common" the deceased party's interest does not terminate at death and the deceased's interest goes to her heirs.

Email your legal questions to mdpetti@pettilaw.com or visit our website. Names, address, or specific personal information will not be used in publications.