

Should you Hire an Attorney to Write Your Will?

As practicing probate attorneys (lawyers who take a will to court to have the property distributed according to the will) members of our section see many wills that were not written by an attorney and which create tremendous problems. In fairness, we also see wills that were written by non-attorneys that worked perfectly well. But given the small cost of having an attorney write a will versus the large cost of a probate battle we suggest that paying an attorney to write your will is worthwhile. To illustrate this point we are collecting and posting on this website examples of problem wills that were not written by attorneys.

Example of an Awful Do It Yourself Will

By Jonathan C. Reed¹

Here, with only the names and account numbers changed is a will I was recently hired to probate. It starts with a pre-printed form. I have used regular type for the form and script type for the part filled in by hand. As you read it can you pick out the problems which I will point out at the end.

LAST WILL AND TESTAMENT

I, *PERSON A*, a resident of the state of *Nevada*, County of *Clark* being of sound disposing mind, memory and understanding, do hereby make, publish and declare this to be my Last Will and Testament, hereby revoking all will and codicils at any time heretofore made by me. My social security number is: *123-45-6789*.

ITEM I

I revoke all will and codicils that I have previously made.

ITEM II

I give, devise, and bequeath the following real and personal property:

1. *2005 Chevy Malibu, Vin. ____*
2. *2010 Ford F-150, Vin. ____*
3. *ABC Bank Acct. No. ____23*
4. *ABC Bank Acct. No. ____29*

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On the 6 day of *August*, 2009 there and then personally appeared _____ and _____ who being duly sworn, depose and say: that they witnessed the execution of the within Last Will and Testament of the within named Testator/trix _____; that said Testator/trix subscribed said Last Will and Testament and declared the same to be his/her Last Will and Testament in their presence, and that they thereafter subscribed the same as witnesses in the presence of said Testator/trix, and in the presence of each other, and at the request of said Testator/trix; that said Testator/trix at the time of the execution of said Last Will and Testament appeared to them to be of full age, of sound mind and memory.

Person G residing at *123 Oak St., Las Vegas, NV*

Person H residing at *123 Maple St., Las Vegas, NV*

SUBSCRIBED AND SWORN to before me this 4th day of *August*, 2009.

Person J

Notary Public for said county and state [Person J's notary stamp is here]

Here are the first two problems that immediately jumped out:

First, most of the property of the person who wrote this will was not mentioned in the will. Who gets that property? Typically a will might list particular items to go to particular people and then the will says how everything else shall be divided. This will does not. At best, this will only disposes of the two vehicles and the two bank accounts. The remaining property goes to various relative according to the Nevada statutes that describe which relatives inherit if there is no will.

Second, did you notice that the will writer (the Testator) dated his will as August 6, 2009. The sloppy public notary first filled in August 6, 2009 on his notarization form, did not fill in the names of the witnesses, and then dated his notarization as August 4, 2009.

With the notarization questionable the stage was now set for a battle between the persons named in the will and the relatives who would inherit under state law if the will were deemed invalid. In addition, the two bank accounts contained very unequal amounts of money and the person getting the smaller account focused on the language that the four persons named in the will were to get equal shares. Of course, the person getting the larger bank account focused on the specific gift.

Fortunately, none of the people named in the will died before the Testator. If one of them had, this will in one part of Item II says that the portion of the predeceased beneficiary goes that person's "issue" (children and grandchildren, etc.) while the immediately following sentence says that person's share goes to Person F.

This badly written will provided employment for two attorneys and created a legacy of bad feeling. Certainly the result was not what the will writer intended.