

The Law and You Do It Yourself Wills

There are always a few self-determined individuals who want to do it themselves. Regardless of how inefficient or unskilled they may be, they simply enjoy the challenge of doing something without paying someone else to do it. It is called independence.

When it comes to the law, the tasks are not generally labor intensive. It is not back-breaking work. Rather, it is “know how.” It is knowledge and experience to get it right.

Most people appreciate at one time or another that a will is something they should have. But, they may not want to pay to have it done or they may not have sufficient means to pay someone else.

Intuitively, a will is just a document that informs the world of how you want your estate to be distributed upon your death. That surely cannot be difficult. So, for those of you who are not faint of heart, you can do it yourself.

And, you can do it without any witnesses, provided that your will is in your own handwriting and signed by you. This type of will is called a “holographic will.”

The word “holograph” finds its roots in the Greek: “*holos*” meaning the entire or whole and “*graphein*” which means to write. Therefore, a holograph is a hand written document.

The term Holographic Will refers to a hand written will rather than a typed, printed, or computer generated will. These kind of wills are given special treatment under Utah’s probate laws.

A will must be ordinarily witnessed by at least two individuals. However, no witnesses are required if the “signature and material portions of the” will are in the testator’s handwriting. You are the “testator” if it is your will.

For example, you cannot have your son or daughter write or print your will for you and

then have you sign it. While such a will could be valid, it would then have to also contain the signatures of two witnesses. To avoid witnesses, your will must be in your own handwriting.

It is possible to obtain a “will form” from an office supply business or on the Internet. While such forms allow you to fill-in the blanks, they may or may not be valid as holographic wills. The test is whether or not the “material portions” of the will are in your handwriting.

To be safe, it is best, if using a “will form,” to use such a form as a guide for your will but not as the actual will. Instead, copy onto a separate piece of paper all portions of the “will form” in your own handwriting. Then add the specifics for your will. That way your will is completely in your handwriting with no portions typed or printed.

The same principal applies to a codicil, which is an amendment to a will. The codicil must also be in your handwriting to be effective as a holographic codicil. Otherwise, it must be witnessed just like the original will was witnessed.

Although a holographic will is not required to be dated, it is best that it include a date. That way it is clear that your will revokes any and all prior wills, whether or not such prior wills were witnessed or were holographic wills.

A holographic will must also include your signature in a manner that clearly shows that you intended your signature to be for the purpose of approving your will. It is not sufficient if your holographic will simply states in its beginning that “I, John Jones, hereby . . .” Although your name is in your handwriting, it is not clear that your name is intended as a signature for the purpose of satisfying the Probate Code.

Of course, a holographic will produced by a testator without legal training is a will that is at risk. Although the technical elements may be met as discussed above, the content of your holographic will, just as a typed and witnessed will, must clearly specify your intent.

The language used in drafting a valid will that accurately reflects your intentions must be precise. Otherwise, your estate may not be distributed as you intended.

While you may save a few hundred dollars by writing your own holographic will, such savings may be misplaced if your will fails to distribute your estate in the manner you intended.

You may want to consult with an Elder Law Attorney. To locate an Elder Law Attorney, check your local Yellow Pages or the National Academy of Elder Law Attorneys at (520) 881-4005, or on their web site at www.naela.com.