

The Law and You

Amending Your Will With Care

At some time in our lives, we get serious about planning for our eventual passing from Mother Earth. In doing so, we may prepare a Will. Later, we may want to make changes to it.

An amendment to a Will is known as a “codicil.” A codicil may supplement, clarify, explain, modify, enlarge, restrict, or may simply confirm or revoke in part or in whole certain provisions of a Will. In drafting a codicil, substantial latitude is allowed. When a codicil is admitted by the Probate Court, it becomes a part of the Will.

A codicil must be drafted and signed in the same manner as a Will. That is, a Will or a codicil must be dated and signed in the presence of two witnesses, unless the Will or codicil is a holographic Will.

A holographic Will or codicil, is one where the “material portions” of the Will or codicil are in the testator’s handwriting, the testator being the person for whom the Will or codicil is prepared.

After a Will has been drafted and signed in the presence of two witnesses, a testator may amend the Will with a codicil.

The Will may have been professionally prepared by an attorney. If so, it most likely has been typed or printed from a computer. A codicil may be typed or in the handwriting of the testator.

The codicil is valid if its material portions are in the testator’s handwriting. It must be dated and signed by the testator. It must also contain some reference to the Will which is being amended.

All too often a testator attempts to amend a Will by writing directly on the Will document itself. This may take the form of deleting portions, adding new text, or changing some portions. This method of amending a Will can be very risky.

Most likely, the handwritten changes are ignored entirely, leaving the Will intact as originally drafted. However, such changes could invalidate the entire Will. In any event, handwritten additions, deletions, or changes made directly on a Will generally fail to achieve the purpose for which the changes were intended.

The better approach is to have a codicil drafted with the same formalities as the original Will. This should include having the codicil prepared by an attorney. It should then be dated and signed in the presence of two witnesses.

Unless two or more codicils are clearly not in conflict with each other and they relate to distinctly different portions of the Will, earlier codicils should be destroyed. By destroying earlier codicils, litigation may be avoided during probate of the original Will.

An alternative to a codicil is to execute an entirely new Will. A codicil, being a separate document, may become lost or separated from its companion Will. To avoid this possibility, a new Will has a distinct advantage over a codicil.

The cost of a new Will, may not be much greater than a mere codicil. Much of the time expended by an attorney in the preparation of a Will or codicil results from meeting with the testator.

The amount of time required for dialogue with the testator is not much different for a codicil than for a new Will. The time required to sign a Will in the presence of two witnesses is no greater than doing the same for a codicil.

The main objective is to implement changes to a Will in a manner that minimizes the risks that such changes may be void or that the original Will may be invalidated. Executing a new Will is the

best choice. A formal codicil is the next best alternative. A holographic codicil may be valid if done correctly, but it is the most risky.

To be safe, consult with an attorney concentrating in Elder Law or estate planning. If needed, check with the National Academy of Elder Law Attorneys at (520) 325-7925 or at their web site: www.naela.com, or consult your local Yellow Pages under Elder Law.