

## Legal Matters – August, 2009

Legal Matters is a column that answers your legal questions. It is written by Barry Evans, Attorney at Law, located at 550 Egret Bay Blvd., League City, TX 77573. Barry has been practicing as an attorney for over twenty-five years. If you have any questions regarding this article, you may contact Barry Evans at 281-557-1900 or you can email him at [barryevans@msn.com](mailto:barryevans@msn.com).



### How Do I Know If My Will Is Valid?

The first step in evaluating the validity of a will is determining if it meets the requirements of Section 59 of the Texas Probate Code. For a typewritten will, the requirements, in summary form are:

1. Signed by the testator (the person making the will). It can also be signed in the testator's presence by someone else at the testator's direction;
2. Be attested to (witnessed) by at least two witnesses over the age of fourteen. These witnesses must sign in the presence of the testator. This requirement does not apply if the will is entirely in the handwriting of the testator (a holographic will).

In Texas, a will must be witnessed by two credible witnesses above the age of fourteen (14). Generally, it is recommended that the witnesses to the will be "disinterested", which means that they are not a beneficiary of the will. In Texas the signing of a will by an interested witness does not invalidate the will, but if an interested witness is one of only two witnesses, any gift to the witness is void.

Providing these two requirements are met, a will to be valid requires "testamentary intent" and "testamentary capacity."

Testamentary intent is the testator's intention to create a revocable disposition of property effective at death. It must be evident that the document was intended by the testator to be the very document disposing of his property. While there are no magic words of testamentary intent, the testator's use of phrases such as "last will and testament" or "my will and desire" is powerful evidence of testamentary intent in Texas.

In Texas, a person cannot dispose of their property through a will unless they are of "sound mind" at the time they execute the will. "Sound mind" is often referred to as "testamentary capacity" in the context of a will.

How is testamentary capacity defined: In Texas, it generally means sufficient mental ability, at the time of the will execution, to:

1. understand the business in which the testator is engaged;
2. the effect of the act in making a will;
3. the general nature and extent of her property;
4. know who is her next of kin;
5. sufficient memory to assimilate elements of a transaction and the ability to hold that memory; and
6. to form a reasonable judgment as to those elements.

Hopefully these guidelines have helped make your estate planning easier. For information regarding your specific circumstances, you should contact an estate planning attorney.

**Editor's note:** *The information in this column is not intended as legal advice but to provide a general understanding of the law. Readers with legal problems, including those whose questions are addressed here, should consult attorneys for advice on their particular circumstances.*