

Legal Matters – July, 2008

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 baryevans@msn.com.



My mother had me type a part of her handwritten Will so it would be neater. Is this considered a valid Will?

Under the Texas Probate Code, a valid holographic or handwritten Will must be **completely** in the handwriting of the testator (the person whose Will it is) and signed by him or her. If any part of the Will is not in the handwriting of the testator, the Will is probably not valid. Typewritten words may not be incorporated into the Will. The Will must be signed by the Testator and it must be dated. On the date the Will is signed, the Testator must have had the competence to create a Will, must have intended for the document to be a Will, and can never later revoke the Will for it to be valid. It does not need to be witnessed and can be written on anything, including stationery. The wording must reflect a present intent to dispose of property at death.

While executing a handwritten Will sounds easy enough, many problems can arise from its interpretation, especially when written by a lay person. If the instrument does not dispose of all of the decedent's property, the undisposed property will pass according to the statutes regarding intestate distribution. If the handwritten Will disposes of more property than the testator owns, complications may arise. Remember, a spouse has only one-half of the community property to give to anyone because the other spouse owns the remaining half.

If the bequests in a handwritten Will are not written in clear language, then it may be necessary for the court to construe the meaning of ambiguous terms. As a general rule, the less clear the language and the more property and heirs involved, the more likely the Will may be contested in court. Contesting a Will is usually a very lengthy and costly process and may result in defeating the testator's intent.

Further, if the handwritten Will does not contain the proper language allowing the executor to serve without bond and allowing independent probate, the executor may be required to obtain court approval of many actions and to post an executor's bond. This causes unnecessary delays and expenses in administering the estate.

For these reasons, although a handwritten Will may be better than no Will, the best approach is to have an attorney prepare a typewritten Will. Most attorneys charge only a nominal amount to prepare a simple Texas Will.

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.*