



Everything Jersey

Older wills can be difficult for heirs to resolve

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By **Karin Price Mueller/The Star-Ledger**

Q. In the state of New Jersey, is a will still valid if the witnesses to a will are deceased? Does someone who is 92 years old have to make a new will?

— RW

A. If the will was valid when it was signed, it will still be valid decades later. But that doesn't mean there won't be potential complications with an older will.

If the will is not a "self-proved" will, it will be more difficult to probate, said Catherine Romania, an estate planning attorney with Witman Stadtmauer in Florham Park.

Romania said "self-proved" means the will was executed by the testator and witnesses, and, at the same time, the testator and witnesses signed an affidavit attesting to the fact that the testator signed the document freely, intending it to be his/her will, and was over 18, of sound mind and under no constraints or undue influence — all in the presence of a notary public.

She said any will made on or after Sept. 1, 1978, will probably be "self-proved."

"Assuming the will is self-proved, the witnesses do not need to appear at the Surrogate's office to probate the will," she said. "If the will is not self-proved, then before it is admitted to probate, one of the witnesses, or some other person with knowledge of the facts relating to the proper execution, must appear before the Surrogate and affirm the proper execution."

For example, someone who knows the witness' and testator's handwriting may attest to the validity of the signatures or someone who witnessed the execution of the will by the testator and witnesses but did not sign as the witness may testify to the execution, she said.

This could result in extra costs and time to settle the will, if it settles at all, said Laura Mattia, a certified financial planner with Baron Financial Group in Fair Lawn.

"If the 92-year-old individual is competent and he/she would like to prevent the extra potential headaches for the executor and the heirs, they might want to consider a new will," Mattia said.

Everyone should periodically review financial and family circumstances and consult with an estate planning attorney about any changes to the law which may affect your situation. That way you can make changes to your will before it's too late.

While you're at it, Romania said you should obtain an Advance Directive for Health Care or a Living Will, in which you name an agent to make medical decisions for you should you be unable to act. The document also provides directions to your agent about your desire to forego life-sustaining treatment. Additionally, secure a Power of Attorney in which you appoint someone to act on your behalf with respect to financial issues.

- Karin Price Mueller

E-mail your questions to askbiz@starledger.com.

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