

Peluso & Weintraub, P.C.

## Wills And The Law

One can find a form Last Will and Testament at a stationary or office supply store and on many web sites. I typed the phrase “free last will and testament” into a Google search and there were 17,200,000 results. Happy reading.

It is not the stationary or office supplies stores, or even the Internet that provides the starting point for the writing a Last Will and Testament. Rather, it is the law. In New Jersey, Title 3B, governing the Administration of Estates-Decedents and Others, is the source.

The law starts with the definitions of approximately 40 useful terms. If you started reviewing them today, in a few months while out with friends and discussing estate planning, you could sound like a learned scholar if not a spouting know-it-all.

Be ready, however, to back-up your talk with some substance. Read on to learn that a will must be in writing, “signed by the testator or in the testator’s name by some other individual in the testator’s conscious presence and at the testator’s direction...” Further, it must be “signed by at least two individuals, each of whom signed within a reasonable time after each witnessed either the signing of the will...or the testator’s acknowledgment of that signature or acknowledgment of the will.” However, “A will that does not comply “with the aforementioned “is valid as a writing intended as a will, whether or not witnessed, if the signature and material portions of the document are in the testator’s handwriting.” Further, “Intent that the document constitutes the testator’s will can be established by extrinsic evidence, including for writings intended as wills, portions of the document that are not in the testator’s handwriting.”

What is referenced above is just a very small bit of information provided in the law that addresses wills and estates. It is the equivalent to the first pitch of a baseball game. There is a lot that follows.

A will or any part of a will may be revoked by the execution of a subsequent will that revokes the prior will(s) either expressly or due to inconsistency. Further, a will may be revoked by “...the performance of any revocatory act on a will...” if performed with such intent. This includes burning, tearing, canceling, obliterating or destroying the will or any part of it. Interestingly...”A burning, tearing or canceling is a “revocatory act on the will,” whether or not the burn, tear, or cancellation touched any of the words on the will.” Perhaps it may not quite rise to the level of interesting, but it may provide an inkling to the level of detail in the law.

Consider also, that all of this law was likely written to address events that occur with enough frequency to warrant such attention. Additionally, there are volumes of text in the form of case law expounding upon different aspects of wills and the law governing same. Hence, the law can be seen as an expansive roadmap of sorts that will permit better planning for events as they may arise.

The law as described is a difficult subject to gather, consolidate and present in a one size fits most if not all form, and one that will be responsive to personal and often nuanced intentions. Self-help may have its time and place, however, it is not clear that developing one's estate plan, including wills, powers of attorney, trusts, etc., presents an appropriate such opportunity.

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