

Deficiencies of a Handwritten Will

Dear Mr. Premack: My mother was shy about seeing lawyers. She knew she should have a Will so when she was diagnosed with cancer she handwrote her own Will. It is very short, and only says “I give all my worldly possessions to my son, including my home and car.” It is signed and dated. Is this a valid Will, and as her son what should I do now that she has passed away? LZ

Texas law recognizes two types of Wills: holographic (that is, handwritten) and attested (that is, witnessed). For a holographic Will to be valid, it must be entirely in its maker’s handwriting, must be signed by its maker, and must be dated. The maker must also, of course, have legal testamentary capacity and the document must express the maker’s intent that it dispose of assets upon death.

Assuming that your mother had testamentary capacity – that she knew her family, her assets, and how she desired the assets to be distributed – then her handwritten Will is likely valid. But what does that mean to you as her son and heir?

For the Will to be recognized as passing title of her home and car to you, the Will should go through probate court. You’ll need to hire an experienced probate attorney, because her handwritten Will left many unanswered questions. Some are:

- Just who is this “son” to whom she refers? If she had more than one son, which one receives under the Will? The court may have to determine exactly who this heir is supposed to be by name. A formal Will prepared by an attorney would have named the individual, and also specified a contingency plan in case her son happened to die before her.
- Who is authorized to administer her estate? The text of the Will which you quoted does not name an Executor to settle her affairs and to transfer her property. If she left debts or taxes, her estate will need administration. The court may have to determine who is appropriate and qualified to act for the estate. A formal Will drafted by an attorney would have anticipated this and named an Executor and alternate Executors, and would have waived the requirement of an expensive bond which you may have to post under her handwritten Will.
- How do we prove to the court that the handwritten paper you claim to be her Will is in fact her Will, and in fact her handwriting? The law requires proof of these basic requirement by witnesses who are not heirs and who are familiar with her handwriting. A formal Will drafted by an attorney would already be witnessed and should have a self-proving affidavit so that the court can simply accept the Will without testimony from witnesses.

She saved a bit of money by writing her own Will, but now you (or her estate) will have to pay a whole lot more in probate due to the deficiencies of the handwritten Will. The best approach to estate planning is to consult with a qualified attorney, who can help navigate the laws to select the fastest, easiest and least expensive overall approach. There are even ways to avoid probate altogether. Estate planning is one area where a self-help approach should be avoided in favor of professional guidance.

Paul Premack is a Certified Elder Law Attorney with offices in San Antonio and Seattle, handling Wills and Trusts, Probate, and Business Entity issues. View past legal columns or submit free questions on legal issues via www.TexasEstateandProbate.com or www.Premack.com.