Ask the Probate Judge - Bank Takeover—Effect on Personal Representative?

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Q: I enjoy your column and have a question that probably applies to quite a few of us in the city. If a bank has been designated as the personal representative in an individual's will and then the bank is taken over by another bank and changes its name, does the successor bank still have the responsibility to serve as the personal representative, or must the will be amended to indicate the new bank's name? N.T., Albuquerque

You are certainly correct that this matter arises often. Banks and trust companies are sold, acquired, merged, and renamed.

Often, when a person designates a bank or trust company as a personal representative or trustee, the document contains language such as, "I appoint X Trust Company, or its successor in interest or its designee as my personal representative." Or, "If I die, resign or am unable to act as Trustee, then Y Bank and Trust, or its successors and assigns shall become Trustee in my place."

Check your will. If the paragraph that appoints the bank includes words such as successors, assignees, or similar terms, then you should be fine. This assumes that your newly named bank continues to offer the services of a corporate fiduciary. You might call your bank and make sure that service is still available.

Even if a will or trust does not include the 'successor' language, I have learned that banks sometimes use "Certificates of Fiduciary Powers." These certificates are presented if questions arise about a bank's authority to serve as trustee when a different bank name appears in the trust document.

One certificate I examined was signed by the "Comptroller of the Currency," a branch of the U.S. Treasury, and stated that Norwest Bank New Mexico had changed its name to Wells Fargo Bank New Mexico. This certificate provides extra assurance if a bank's name changed after the will or trust appointing it was signed.

If you change your mind about who should serve as your personal representative, you can create a codicil (amendment) to your will and nominate another corporate fiduciary or individual to serve. Make sure the codicil includes the language about successors to help fend off future problems if THAT bank changes names! Remember that codicils must be signed and executed in the same manner as the original will.

Q: Is a will from Arizona valid in New Mexico? I have just moved here from Arizona and need to know if a new will is required. L.H.

Review your will to verify that it still accurately reflects your wishes. If so, making a new will should not be necessary. New Mexico generally honors wills from other states or countries if the document was properly created in the other

state or country. As long as your Arizona will was validly executed, it should work in New Mexico. In fact, I have admitted wills from all over the United States into probate at my court.

Some people's wills no longer accurately reflect their wishes. People can consider updating very old wills (over twenty years old) even if the terms remain the same. An updated will shows that you have recently considered your estate plan and chosen a particular way to distribute it. However, updating old wills is not required and a will executed many years ago remains valid. Even if your will is 40 years old, it remains in effect unless you revoke it.

Family members and/or your personal representative need to know where your original will is stored. You need not reveal the contents of the will, but you should definitely reveal its location and how to retrieve it.