Ask the Probate Judge—Personal Representatives & Wills

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Q: I read your column of July 5, 2007, and I am confused. I was appointed personal representative by my deceased brother-in-law and have met with the attorney who drew up his will, trust, and amendments. My question to the attorney was whether we had to go through probate court. He says no. I wonder if he is correct? J.C., Albuquerque

Your deceased brother-in-law did not "appoint" you personal representative; he named you in his will as his choice of personal representative. Only a court can "appoint" a personal representative, thereby giving the personal representative legal authority to act on behalf of an estate.

If your brother-in-law had a trust and all of his assets were properly transferred into the name of the trustee of the trust before his death, a court probate proceeding is probably not needed. Or, if he titled his assets using payable on death, transfer on death, or other beneficiary designations, these assets would not require probate.

My prior column stated that assets worth more than $30,000 titled in the decedent's *sole name* or as *tenants in common* require a court proceeding after death to pass them to the heirs or devisees. If your brother-in-law had no assets titled in his sole name or tenants in common when he died, a court probate proceeding would be unnecessary. Your question illustrates the concept "Not all wills have to be submitted for probate."

Q: You appointed me as personal representative three weeks ago. I have not heard from the court since. I thought you would assign a judge to assist me with my case.

I am the only judge at the Bernalillo County Probate Court. Once you file a case with our court, I am the judge "assigned" to your case.

More than half of the people filing cases with our court do not have attorneys. My staff and I have tried to make the probate court user-friendly with do-it-yourself forms and instructions, brochures, and our web site, **www.bernco.gov/probate_judge**.

However, court staff and judges cannot serve as the personal representatives' lawyers. Nor can we help you prepare deeds. Other than general information, we cannot tell you how to administer an estate. If you need help, hire an attorney, appraiser, accountant, real estate agent or other professional to assist you.

Informal cases are not supervised by a court. The court's only involvement is: 1) to review and admit the will, if any; 2) sign an order appointing a personal representative; and, 3) issue letters to give the personal representative authority to act on behalf of the estate.

Q: We have a will from another state. We need to change some names in the will. Can we retype this will, with the name changes, have it witnessed and notarized and will it still be valid? Thank you. J. K.

The method you propose should work as long as the new will that you type says that it revokes all prior wills and codicils made by you. You should probably substitute

“New Mexico” for the other state’s name and make sure that the language at the end of the will complies with New Mexico law.

However, a simple codicil (amendment to a will) can also accomplish your goal with much less typing. The codicil should: (1) identify the will that is being amended, including the date the will was signed; (2) state your name and domicile; (3) specify in detail what changes are being made; and (4) state which sections of the will remain in effect.

The codicil must be executed in the same manner as a will. This means that you must sign and date the codicil in the presence of two witnesses who also sign the codicil. New Mexico law does not require the codicil to be notarized, but attorneys (or their staff) usually notarize wills and codicils that they prepare.

New Mexico law does not prohibit a person from adding a codicil to a will that was prepared and executed in another state. However, when a will is made in another state, some attorneys prefer to prepare a new will rather than a codicil.