

Ask the Probate Judge—Out-of-State Wills & Trusts

By Merri Rudd, appeared March 20, 2008, Albuquerque Journal, Business Outlook
Reprinted with permission

Q: I had a will drawn up in 1999 in Ohio. Included was a power of attorney for my finances (given to my daughter) and health (given to my son). Now that I reside in New Mexico, is this will still valid if I don't change anything? If not, what would I have to do to make it valid in New Mexico? Also, if I wanted to change something, would I have to start from scratch? V.L., Albuquerque

Your Ohio will and powers of attorney should be valid here. New Mexico generally honors out-of-state wills and powers of attorney if they were validly created in the other state. Keep your will and powers of attorney in a safe place that is accessible to your personal representative (the person who will handle your estate matters) and agents.

If a will still accurately reflects your wishes, updating an old will is not required. Even if a will is 50 years old, it stays in effect unless it is revoked by the maker.

Often a person has a valid will and just wants to modify the appointment of a personal representative, change a beneficiary, or indicate a change in marital status. Some people take their original will, cross out the old language, and write the changes on the original will. These changes would not be valid in New Mexico because they were not executed in the presence of witnesses.

The correct way to change a will is to sign a codicil (amendment) to the will. 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.

In New Mexico 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, some attorneys prefer to prepare a new will rather than update an out-of-state will.

Q: My husband and I live in the State of Washington part-time and New Mexico part-time. We own condos in both states. We have a revocable living trust set up in New Mexico. Will it cover the properties in both states? Thanks, S.W., Albuquerque

If you transferred both condos into the name of the trustee of your trust, you should be fine. Transferring real estate into the trust requires new deeds to be prepared. Assuming you are both trustees of your trust, the new deeds would transfer the property from “husband and wife” to “husband and wife as trustees of the _____ (name) Revocable Trust dated _____ and their successors in office” or similar language.

The deeds must be recorded into the public record in the counties where the condos are located. Recording the new deeds is important, so that a public record of the transfer of the real estate into the trust exists.

These requirements also apply to out-of-state real property. Seeking the assistance of a title company or attorney in the state where the property is located is advisable to make sure the new deeds comply with state law. Improperly drafted deeds

may cloud the title to the real property and require a court procedure to straighten out the title. So make sure the deeds are done correctly now to avoid problems later.

Your question illustrates one good reason to have a revocable living trust: owning real property in several states. If the condos are properly transferred into the name of the trustee of your trust, a court proceeding should not be necessary in either state to pass the condos to the trust beneficiaries after your deaths.

© 2008, Albuquerque Journal, All Rights Reserved