Ask the Probate Judge—Powers of Attorney & Probate

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Q: My parents live in New Mexico part-time and Florida part-time. Do they need powers of attorney from both states to cover health care and financial matters? Do medical directives in one state apply to the other? G.R., Albuquerque

New Mexico's new Uniform Power of Attorney Act states, "A power of attorney executed other than in this state is valid in this state if, when the power of attorney was executed, the execution complied with: (1) the law of the jurisdiction that determines the meaning and effect of the power of attorney…; or (2) the requirements for a military power of attorney pursuant to [federal law]."

New Mexico's law on health care powers of attorney similarly states, "Any advance directive, durable power of attorney for health care decisions, living will, [or] right-to-die statement…that is executed in another state or jurisdiction in compliance with the laws of that state or jurisdiction shall be deemed valid and enforceable in this state to the same extent as if it were properly made in this state."

Assuming your parents' Florida powers of attorney were created properly, they should be honored in New Mexico. But the real world does not always comport with state law. Perhaps readers can let me know whether their out-of-state powers of attorney for health care and financial matters have been honored in New Mexico.

Although most states honor each other's documents, I can't speak for Florida and whether its laws require out-of-state powers of attorney to be honored there. You might check with a knowledgeable Florida attorney to find out.

Q: Recently someone told me there is a $100,000 cap on the estate if it is eligible to be filed in the probate court. She said if the estate is worth more than that, then it must be filed in district court. I said I would ask you if this is correct. Thank you. F.C., Albuquerque

There is no cap on the amount of an estate that can be filed in the probate court. In fact, the amount of the estate is none of the court's business unless a dispute arises.

If someone wants to open an informal probate or appointment proceeding, has the original will (if any), and has the highest priority to be appointed as the personal representative, then the case can be filed in either the probate or the district court. The amount of estate assets is irrelevant to whether the probate court can docket the case.

Once the court appoints a personal representative in an informal proceeding, the court's involvement ends. The personal representative must then follow the law, the instructions in the will (if any), or the laws of intestate succession in paying creditors and taxes and distributing the estate. If the personal representative fails to carry out his or her duties, then any interested person can file a proceeding in the district court to protest.

Q: An ex-husband's child is named as a beneficiary in the ex-wife's will, which was done before the divorce. The ex-wife died recently. Is the stepchild still entitled to the gift? I vaguely recall you saying that divorce cancels gifts to the ex-spouse, and I wondered if this also applied to the ex-spouse's children? A.L., Albuquerque

You have a good memory! Let's call the ex-wife Sarah, the stepchild Julia, and the ex-husband Bill. New Mexico law says that divorce severs any bequests made to Bill in Sarah's old

will. Divorce and annulment also automatically exclude an ex spouse from receiving payable on death (POD), transfer on death (TOD) or other beneficiary accounts (unless the divorce decree mandates otherwise) or from serving as a personal representative. However, the law contains no such provisions for stepchildren.

Some readers may think this is an unfair result. But Sarah could have avoided this result by making a new will or updating her old will with a codicil. She didn't. Maybe she forgot or maybe she maintained a close relationship with Julia after the divorce. Either way, Julia is entitled to receive the gift left to her in Sarah’s will.

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