



## IS MY WILL VALID?

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**By Dorothy Hagel**

Writing your own will or using a will kit is risky. Such “homemade” wills may be accepted and probated by the Court, however, there is a very good chance that the Court may determine that the will is invalid and your estate will be distributed according to the rules of intestacy. Wills are subject to certain formality requirements prescribed by law. Unless these requirements are met, the document is unlikely to be accepted as a valid will and the instructions in it could be challenged.

A will could be invalid for a number of reasons including the following:

- The document is improperly witnessed
- The testator married after the will was executed
- The testator lacked testamentary capacity
- Changes were made to the will improperly

There are also situations where the document is formally valid, but the family circumstances make the disposition made in the will unachievable because the estate plan is not properly structured. This can happen, for example, if your surviving spouse remarries or gives everything away to charity rather than to your children.

You might assume that if you leave your entire estate to your spouse that upon his or her death whatever remains of your estate will be inherited by your children. However, the surviving spouse is free

to do with the estate as they wish – unless steps are taken beforehand to limit their authority to dispose of the money.

This is especially important with second marriages and the surviving spouse is not the parent of deceased's children. Your spouse's will could leave everything from your estate to their children only and exclude your children. Or, better yet, your spouse could leave everything to their new spouse. In either case, your children could receive nothing from your estate.

It is also important to consider that the law grants certain individuals specific rights, such as spousal and dependant's rights, about benefitting from your estate regardless of what is written in the will. Spousal and dependant's right to support from the estate take precedence over the testator's wishes in the will. If the estate is not structured with these rights taken into consideration, the wishes expressed in the will may not be followed.

Take a good look at your existing will to make sure that it is a valid document and that the dispositions in your will are actually valid considering your individual circumstances. If you are unsure, contact an experienced estate lawyer who can advise you on the best way to limit potential problems and ensure that your wishes are followed. Even small problems with your will can lead to estate litigation which can easily deplete the entire estate leaving very little to the beneficiaries and often damage family ties beyond repair.

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