Wills and Lawyers – who needs them?

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Do I need a will?

There is certainly no law that says that someone must have a will. But there are consequences that may result from not having one.

A will (short for a “last will and testament”) is a document in which a person specifies who should receive her property after her death – specifically, property that she owns in her name alone, with no previously-designated beneficiary. (A will has no control over property such as a bank account with an “in trust for” designation, or an IRA with a named beneficiary, or life insurance proceeds – so long as the beneficiary is alive!) If someone dies without a will, then any property she owns in her name alone – money in an account, or a house, a pet, furniture, jewelry, etc. – will be inherited according to what is call the law of “intestacy”. This law says that property is to be distributed to the closest living relatives of the person who has died – if those persons can be identified and located.

What’s wrong with that, you may ask? Nothing – unless you don’t want your closest living relatives to inherit your property! And in New York City and elsewhere, a good number of folks do not want to leave their property to their closest living relatives. A senior may want to leave his property to a longtime companion to whom he was not married, or to a neighbor who cared for him during an illness, or to a respected charity. Or a senior may want her daughter to inherit everything and her son to inherit nothing. None of these possibilities are options under New York law if one dies without a will.

Can’t I write a will myself?

Sure you can – just as you can try to repair your own car. But whereas you’ll probably know immediately if you didn’t fix your car properly, problems with a will won’t surface until after death, when it’s too late to repair them. Therefore it’s a good idea to obtain the assistance of a lawyer when preparing a will.
A lawyer can be helpful when preparing a will in an obvious way: the lawyer will make sure that the will is written properly. A lawyer will make sure that her client’s wishes are expressed unambiguously in the will, and the lawyer will likely include special language designed, for example, to protect beneficiaries who are receiving means-tested benefits, like SSI. A lawyer can also include additional items like an affidavit for the will’s witnesses to sign (in New York, a will must be witnessed by two people); although this affidavit is important, many do-it-yourself wills on the Internet do not include it.

And speaking of witnesses, a lawyer will also make sure that a will is “executed” properly. A will “execution” is the ceremony where the will’s owner – the “testator” – signs the will in front of witnesses. If the will is not executed properly, a judge may deem it to be invalid.

**Isn’t the law pretty simple when it comes to wills?**

Okay, so this is not a question that people ask, but it’s an assumption that they often hold. A will can be a relatively simple document, but certain laws and rules that have nothing directly to do with wills can prove to be very important when someone is deciding what her will should say, as the following example shows:

Not long ago a senior became convinced that he was entitled to inherit a share of his late mother’s condominium in Florida. Sure enough, his mother’s will stated that her share of the condo was to go to her son at her death. But what the son – and apparently his mother – did not know was that, because of the way the condo deed was written, under Florida law the mother’s husband became the sole owner of the condo upon her death, and the mother’s will had no power to change this. Had the mother and her husband gone to a lawyer – as opposed to the dubious notary in their Florida neighborhood who claimed to provide “assistance” with wills – the mother and her husband might have changed the way that they owned the condo so that her son could be guaranteed to inherit a share of it upon her death.

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