

ESTATE PLANNING
DO I REALLY NEED A LAWYER TO DO A WILL?
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That is a question each person will answer for himself. Hopefully, the following cases will give you some insights. The facts are accurate, but the names are fictitious.

CASE NO.1: Mr. Frank, an elderly bachelor who resided in New Orleans had four nieces and two nephews. Three of the nieces were of great benefit and assistance to him in his later years. The nephews and the other niece had no interest in his well being.

Uncle Frank decided to prepare a will and leave everything to the three nieces who were of great comfort to him and to leave nothing to the nephews and the other niece, who had no interest in his welfare. Uncle Frank prepared his will and died several years later in New Orleans.

A great nephew called from Dallas, Texas and advised that his Uncle Frank had died and had left a will leaving everything to the three nieces who assisted him and left nothing to the nephews and other niece.

Upon request the great nephew faxed a copy of Uncle Frank's will. Uncle Frank, being a frugal individual, had prepared the will himself. Uncle Frank had typed the will himself, signed it and even had two individuals witness his signature.

This will being neither a statutory will (a will executed before two witnesses and a notary) nor an olographic will (entirely handwritten) was not valid and therefore his estate passed through the laws of intestacy (no will) and all of the nieces and nephews inherited his estate in equal shares.

Had Uncle Frank parted with a few dollars, he could have had an attorney assist him in the preparation of either an olographic will or statutory will, and his estate would have been distributed according to his wishes and desires and not according to the intestacy laws of the State of Louisiana.

CASE NO. 2: Joanne, a single woman, who is a very successful business woman, is one of five children who wants to make sure that her sister, Susie, who is mentally challenged, is taken care of if Joanne should die first.

In an Estate Planning Seminar, I mentioned the use of a Special Needs Trust for children or adults who are mentally challenged and receive social security, medicaid and other governmental assistance.

After this seminar Joanne visited with me and shared the life history of Susie and her desire to take care of Susie upon her own death. I then asked her how she planned to accomplish this for Susie. She relayed that she planned to leave everything outright to Susie.

I explained this would adversely affect her sister receiving social security, medicaid and

governmental assistance. She was advised that if she really wanted to take care of Susie, she needed to have a will prepared with a Special Needs Trust to take care of the extras (not food, lodging, clothing etc) and thereby retain her social security income, medicaid and other available governmental assistance.

Needless to say, the Last Will and Testament was prepared for her with the Special Needs Trust for her sister, Susie. Joanne is quite relieved and pleased that her desires for her sister have been truly met.

CASE NO. 3: John and Kay have been married for thirty (30) years and have two(2) grown children. Kay wants to do some estate planning, including a will. However, John advises her “that we don’t need to do wills because if I die first you get everything for life and upon your death everything goes to the kids”.

What John does not know is that John’s separate property does not go to the wife but goes directly to the children without a will. Second, the usufruct (or right of use) to a spouse without a will terminates at death or remarriage, whichever occurs first.

With a properly drawn will, each spouse can protect the other spouse by providing for usufruct for life with a right to sell, mortgage, or encumber non-consumables, such as a house, without the approval the children (naked owners) and additionally provide for no accounting to be required to the naked owners.

In conclusion, if you are really interested in taking care of your loved ones, it is important that you seek a Louisiana attorney who does work in this area in order to accomplish the end results you desire in your estate planning.

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