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"Tip of the Month"

The Self-Proving Will

Years ago, all wills needed to be proved in the probate court. This means that after the maker of the will (the Testator) died, one of the witnesses to the will would have to come to the probate court. The witness would confirm that the Testator had the requisite testamentary capacity (knew what he or she was doing) when the Testator signed the will.

As time went on, people were living much longer and moving around a lot. At time of the Testator's death, family members sometimes could not find the witnesses to the Testator's will. The witnesses might have died before the Testator died. As a result, the will could not be proved and the Testator's stated intentions would be lost. To solve this problem, new laws were made to establish the self-proving will.

The self-proving will statutes vary somewhat from state to state, but most are based on uniform laws that are intended for adoption in all states. Today, the probate courts in every state will now honor the self-proving nature of a will made in another state if the will's self-proving language conforms to the statutory requirements of that other state where the will was made.

In New Hampshire, the self-proving will statute sets forth the requirements first in a four-part oath that the Testator and at least two witnesses must swear to at the time of signing:

1. The Testator signed the will or directed another to sign it for the Testator;
2. This was the Testator's free and voluntary act for the purposes expressed in the will;
3. The Testator and the witnesses all signed in each others' presence;
4. The Testator was at least 18 years of age, or if under 18 was married, and was of sane mind and under no constraint or undue influence.

The Testator and the witnesses must sign in the presence of a notary or justice of the peace who can take their oaths and who also signs the will. Beneficiaries of the will and their spouses cannot act as witnesses.

The statutory self-proving features of wills do not apply to trusts because trust estates usually do not go through probate and therefore do not need to be proved. On the other hand, a "pour-over" will which leaves property to a trust does need to be self-proving.

If you have any questions about wills, trusts, probate, or estate administration, please give us a call at 603-669-1971 or send an email to mailbox@biz-patlaw.com.

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