

What We Know

ARTICLES & INSIGHTS

ABOUT THE AUTHOR

Are Your Heirs Protected?

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There are three basic types of Wills under North Carolina law: an attested written Will, a handwritten or holographic Will, and an oral or nuncupative Will. While there may be no perfect version, an attested written Will may give the testator, the person executing that Will, the best chances of actually passing his or her property to the person or organization of the testator's choice without a greater chance that the court will not recognize the testator's last wishes. With the increasing availability of do-it-yourself online documents, fewer people are receiving qualified legal advice when drafting their legal Will documents, a trend that could potentially leave an untold number of heirs unprotected.

An attested written Will is one that is signed by the testator and witnessed by at least two competent witnesses. Determining who is a competent witness is crucial and presents a potential pitfall for the testator. In addition to having two competent witnesses, the testator must sign the Will himself or herself, with intent to sign that document, or direct someone to do it for him or her, in the presence of those two competent witnesses. Signing the Will is also a potential pitfall for the testator. Many things can go wrong during this process which could ultimately lead to a court not accepting the document.

A holographic Will is one that is handwritten. It must be entirely in the testator's handwriting, and it must be signed by the testator. In addition to this, it must be found after the testator's death in a place that would lead a court to determine that it was, in fact, the testator's Last Will and Testament. Also, witnesses are not needed for a holographic Will. But, bringing a holographic Will before a clerk of court to determine its validity can be a challenge. The person purporting to hold a testator's holographic Will must validate through the proper procedures that in fact the handwriting is that of the testator. This is another potential pitfall for someone drafting a Will on his or her own.

The final type of Will is an **oral or nuncupative Will**. The oral or nuncupative Will, of course, is the least practical form of a Will because it requires such a strict set of rules. First off, it must be made "in that person's last sickness or in imminent peril of death and who does not survive such sickness or imminent peril." And secondly, that utterance must be made "before two competent witnesses simultaneously present at the making thereof and specially requested by the person to bear witness thereto." This type of Will

is a rarity and proving to a court the validity of such Wills is a challenging feat, to say the least. Current North Carolina law does not accept video or audio-recorded Wills.

Protecting one's heirs begins with proper estate planning. It is always advisable to consult a qualified estate planning attorney before attempting to document your wishes in your Last Will and Testament. While Will documents found online might be convenient and less expensive, the legal advice that comes from meeting with an attorney is invaluable, and his or her heirs will be much better off because a solid estate plan was in place.

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