



# Not All Wills Created Equal

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Drafting a Will can be an unpleasant experience, as it forces the writer (the Testator) to contemplate what will happen to his or her family and estate upon his or her passing. At the same time, it can also be a relief to know that you've done your best to take care of your family. That said, all Wills are not created equal. In the short time I've been practicing law, I've heard many horror stories in which someone's experience drafting his or her Will has been scarily similar to ordering fast food. A number of people have told me of meeting with their lawyer for approximately five minutes, answering a couple of questions, and then never seeing the lawyer again, but instead meeting with his or her assistant at a later date to sign the Will.

The reality is that while drafting a Will looks relatively easy it's actually

quite complicated. To adequately draft a Will lawyers must consider not only the law relating to Wills and Estates, but also the implications of family, tax, corporate and property law (just to name a few). The lawyer must have a complete picture of your life and your wishes in order to draft a Will that meets your individual needs, while respecting the letter of the law. If this process is conducted haphazardly, with little regard to your personal situation and the applicable laws, your Will can eventually be found partially or entirely invalid. The worst part is of course, that the invalidity may not be discovered until you're already gone.

The following information is intended to assist you in drafting your Will (with the assistance of a lawyer), or alternatively, to assist you in determining if your existing Will was drafted

appropriately.

Unless your life is quite simple, in that you own little and have no minor children, your first meeting with a lawyer should take approximately 45 minutes to one hour. Personally, I like to start by finding out what my clients own, and how and with whom they own it. I also try to get a picture of his or her family life. Without this information, I can't figure out what laws are applicable, and what needs to be done to avoid probate fees, simplify the transfer of land, meet the needs of the Testator's family and to avoid family conflict. For example, I need to know that the Testator might be getting married, as unless his or her Will specifically states that it has been "drafted in contemplation of marriage to x" it becomes invalid upon his or her marriage. Also, I need to know if my client owns property

abroad, as he or she may require an international Will, which is somewhat different than a standard Will.

Next, I like to discuss the suitability of the Testator's proposed Executor(s). Are they of the right age? Do they live in a suitable location? Will appointing them create conflict/hurt feelings in others? Should they be remunerated for their efforts?

Next we look at dividing up their property. In doing so, I consider the possible tax consequences. Are there any potential family disagreements? What happens if certain people predecease them? Are they legally entitled to pass this property to someone else? Some of my favorite Will drafting horror stories involve people trying to bequeath (give away) property that they didn't own. Another favorite is the Will that said "I give \$30,000 to each of the youngest living male and female relatives of my father". While this monetary bequest is legal, unless you're royalty, it's

overly complicated.

If someone under the age of eighteen might become a beneficiary I discuss setting up minor trusts, as any gifts payable to a minor pursuant to a Will must be held in trust for them. Together the clients and I determine whether the money should be held in trust until the child is older than eighteen, such as until they're twenty-one or twenty-five. We also discuss whether, and how, they would like some of the money distributed before the child reaches the age of majority. I also determine if any of the children have special needs and receive government benefits that could be negatively affected by receiving an inheritance.

If the Testator has minor children I also discuss the suitability of the proposed guardian(s). Will these individuals require extra money to buy a larger car or expand their home to accommodate the Testator's children? We also discuss the fact that while the courts place great weight on a parent's

wishes, the guardianship section of a Will is not legally binding, and the courts have the final authority to appoint a guardian. Moreover, if the individual is separated or divorced, I inform them that under the law there is a presumption that the other biological parent will take over care and control if he or she should pass away, and that considerable evidence is required to overcome this presumption.

Later, when the Will is drafted, I meet with the client for another 30 minutes to one hour to review and sign the Will. I make sure that everything is as they wish, and explain the many terms included, which outline the responsibilities and powers the Executor(s) will possess. In doing so it's very common to make changes, as the client has had time to reflect upon their needs and wishes. One thing I never do is have the client review the Will with my assistant. While law firms simply couldn't operate without skilled assistants, the

complicated nature of a Will requires in-depth knowledge of the law that can only be obtained through legal study. Ultimately, it's the lawyer who should be reviewing the document and explaining it in detail to the client.

To conclude, if your past Will drafting experience

included some of the red flags I've raised above, or if your future Will drafting experience is closer to ordering fast food than the in-depth process I've outlined, you should be questioning the validity of your Will/the process. Further, you get what you pay for, and a Will is not something on which you should seek out the

cheapest price. The more complicated your situation the more you should be charged, as the cost ultimately reflects the time and effort put into it by the lawyer.

For more information on drafting a Will, or regarding the validity of your existing Will, please contact a solicitor.