

# Elder Law: What Ever Became of Free Will?

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No, not the philosophical kind, the kind you used to be able to get a lawyer to draw up for you for free or for a token fee. Back in the old days, lawyers would practically give away Wills in the hope that the family would someday hire the lawyer to assist with administration of the decedent's estate, and the fee for that might be 5%. Usually, these Wills would be very basic, similar to what you might find on the Internet nowadays. So, what's wrong with estate planning on the cheap? The answer, of course, is that you get what you pay for. In Pennsylvania, you can handwrite a valid Will as long as you sign it at the end; you don't even need witnesses. But that Will won't be of any use if the decedent owned real estate in New Jersey, because New Jersey does require that Wills be witnessed. You didn't know that, but most lawyers do, so the Will form that you find on the Internet (assuming it was prepared by a lawyer in the first place) is likely to be valid in all 50 states if you can understand and follow the directions. However, a basic (i.e. cheap) Will is only designed to provide for the disposition of your assets to the people you choose to receive them. And in this day and age, that isn't enough.

One reason for this is the need to address tax issues. Everybody knows that the only certainties in life are death and taxes, but few people consider that income tax liability survives their death, and that their income-producing assets keep right on earning taxable income after they're gone. Who is going to pay the income tax? And how about death taxes? Pennsylvania has an inheritance tax in addition to the Federal death tax, and the combined death tax rate can be in the neighborhood of 60%! Although you can do quite a lot to alleviate or eliminate taxes (and control who has to pay them) if your Will is drafted properly, you can't do all of that in a one or two-page Will.

Another matter that needs to be addressed in modern estate planning is the possibility of long-term nursing home care. Generally, this involves trust planning and the use of available government benefits, with the goal being to completely eliminate sole ownership of assets that might otherwise pass by Will through a probate estate, but which in fact are almost certain to be used up on nursing home costs, leaving nothing left for the heirs anyway. This type of estate planning requires competent eldercare legal counsel, for which there is no free fill-in-the-form Internet substitute. Obviously, in such circumstances, a basic "free" Will leaving everything to a surviving spouse in a nursing home is worse than useless.

With the ever increasing proliferation of lawyers, it is increasingly less likely that the lawyer who drafted a Will is actually hired to administer the estate (that's right – you're not required to use that lawyer). So, as the legal issues have become more sophisticated, non-specialist lawyers who concentrate their practice in dog-bite cases have become less and less likely to want to chance writing a "free" Will that might come back to haunt them at the hands of a different lawyer in the malpractice arena. Sure, you might still be able to find one, and there's always the Internet, but don't you and your heirs deserve better?