

Utah Spirit

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Elder Law: Holographic Wills

The word “holograph” finds its roots in the Greek: “*holos*” meaning the entire or whole and “*graphein*” which means to write. Therefore, a holograph is a hand written document. When used as an adjective it describes a particular document that is hand written.

The term Holographic Will refers to a hand written Will rather than a typed, printed, or computer generated Will. Since these kind of wills are given special treatment under Utah’s probate laws, this column will discuss holographic wills and compare them to typed or printed wills.

Ordinarily, a will must be witnessed by at least two individuals. However, no witnesses are required if the “signature and material portions of the” will are in the testator’s handwriting. The testator is the person for whose estate the will is intended to govern.

To qualify as a valid holographic will, the will must be handwritten by the testator, not someone else. For example, you cannot have your son or daughter write or print your will for you and then have you sign it. While such a will could be valid, it would have to also contain the signatures of two witnesses. To avoid witnesses, your will must be in your, the testator’s, handwriting.

It is possible to obtain a “will form” from an office supply business or on the Internet. Many people do just that in order to save on the costs of obtaining a will. While such forms allow you to fill-in the blanks, they may or may not be valid as holographic wills. The test is whether or not the “material portions” of the will are in your handwriting.

The Probate Code does not provide any definition of what “material portions” means. Therefore, you are subject to some risk in deciding whether any of the typed portions of a “will form” may be construed as “material.” If a Probate Court subsequently determines that some of the typed portions of your will are material, and you relied on the will as a holographic will (*i.e.*, no witnesses), your will could be found to be invalid.

To be safe, it is best, if using a “will form,” to use such a form as a guide for your will but not as the actual will. Instead, copy onto a separate piece of paper all portions of the “will form” in your own handwriting. Then add as appropriate the specifics for your will. That way your will is completely in your handwriting with no portions typed or printed.

The same principal applies to a codicil, which is an amendment to a will. The codicil must also be in your handwriting to be effective as a holographic codicil. Otherwise, it must be witnessed just like the original will was witnessed.

Although a holographic will is not required to be dated, it is best that your will include a date. That way, it is clear that your will revokes any and all prior wills, whether or not such prior wills were witnessed or were holographic wills.

A holographic will must also include your signature in a manner that clearly shows that you intended your signature to be for the purpose of approving your will. That is, it would not be sufficient if your holographic will simply stated in its beginning that “I, John Jones, hereby . . .” Although your name would be in your handwriting, it would not be clear that your name was intended as a signature for the purpose of satisfying the Probate Code.

Of course, a holographic will produced by a testator without legal training is a will that is at risk. Although the technical elements may be met as discussed above, the content of your holographic will, just as a typed and witnessed will, must clearly specify your intent. Otherwise, your estate may not be distributed as you intended. The language used in drafting a valid will that accurately reflects your intentions must be precise. Further, contingencies need to be considered that you may overlook.

While you may save a few hundred dollars by writing your own holographic will, such savings may be misplaced if your will fails to distribute your estate in the manner you intended.