

Is Having An Undated Will A Problem?

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Dear “Ask The Attorney”:

My lawyer did not date my will and said it doesn't need one. Is that correct? I went to the bank and got a notarized statement that my will was made on that date, am I covered?

Uncle Ed

Our guest blogger is Gary R. Botwinick, Esq. Mr. Botwinick is a partner with Einhorn, Barbarito, Frost & Botwinick, PC and the chair of the Trusts & Estates/Taxation department of the firm.

Dear Uncle Ed:

It sounds to me like the attorney who prepared that Will is not familiar with probate matters. Though New Jersey statutes do not specifically require a Last Will and Testament to be dated, not setting forth the date of a Will can be a recipe for disaster. New Jersey's statutes provide that “*a will shall be . . . in writing . . . signed by the testator . . . and . . . signed by at least two individuals, each of whom signed within a reasonable time after each witnessed either the signing of the will . . . or the testator's acknowledgement of that signature or acknowledgement of the will.*” There are limited exceptions to this rule, and over the past seven years, New Jersey's laws defining what a Will is have been liberalized.

The recent liberalization of the statutes was intended to protect non-lawyers who attempt to write their own Wills, or who attempt to modify a prior Will written by an attorney when they simply want to make a minor revision. However, when an individual actually engages a lawyer to prepare a Will for them, they should be comfortable in assuming that the attorney has enough experience in the law to be able to (i) draft a valid Will, (ii) incorporate the client's wishes in a clear and coherent fashion, and (iii) ensure that the Will is going to be admitted to probate as the **Last** Will and Testament.

The practical problem that I foresee in Uncle Ed's situation is that another Will that is actually dated prior to the date of the Last Will could be accepted to probate unless the individual offering the last executed Will for probate can establish that it actually came later. Now that may not be that hard to establish, since the attorney preparing the Will can testify as to the date when it was executed. Having the bank notarize the Will would also be helpful. But why go through all of that trouble. **How hard is it to put a date on a Will?** I can think of no good reason not to put the date on the Will. Your concern is valid and you may want to have another attorney review the Will to ensure that it will actually accomplish what you want it to accomplish.

“Ask the Attorney” is a new blog in which answers to your legal questions submitted to asktheattorney@einhornlawyers.com may be answered. The answers to the questions are for informational purposes only and are not to be construed as legal advice or the creation of an attorney-client relationship. The facts of each case is different, therefore you should seek competent legal representation.