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INTERPRETING A WILL

Disputes sometimes arise around the interpretation of a will. This is especially true when a person uses a standard form will kit document or writes their own will. If the language in the will is too vague or uncertain, the executor may have to go to court to have a judge decide who gets what.

Consider the case of Pauline Rudling.

Using a fill-in-the-blanks will form, she left two properties to her sons, Ron and Larrie. Ron received one property "with all loans, liens [sic], mortgages attached." Larrie received the other property "free and clear of all debt." The question was – who should pay for the funeral and testamentary expenses, capital gains taxes, and estate administration expenses?

Ron argued they should be charged equally against both properties. Larrie claimed Ron should pay them all, since he was to receive his property "free and clear of all debt."

The court concluded that the word "debt" in relation to Larrie's property did not include within its meaning the taxes, expenses and other charges that must be paid when an estate is probated. These should be paid first, then the specific bequests of the two properties could be made – meaning both Ron and Larrie would share the payment of these expenses.

In another recent case, Marjorie Dobson's will had to be interpreted in court because it too wasn't clear.

Twice widowed, Marjorie didn't have any children. But she had nieces and nephews, and her second husband had

children of his own. Her will – which she made without consulting a lawyer after her second husband died – directed her executor to "pay to and transfer from the cash residue of my estate" specific amounts to her nieces and nephews as well as her late second husband's relatives.

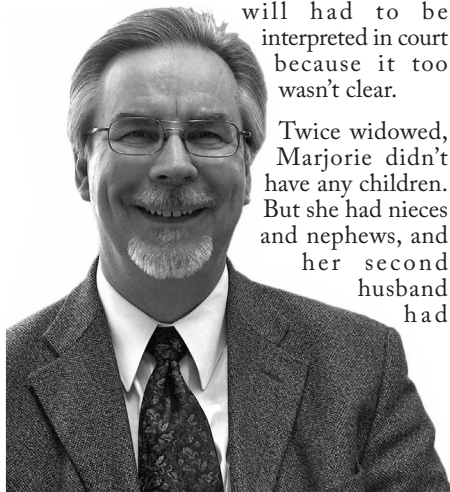
When she died, Marjorie left behind a house and cash/bonds worth about \$140,000. Unfortunately, the will didn't authorize her executor to sell her assets nor did it specifically deal with disposing of her house. The question was what she intended to do with the house.

Her nieces and nephews argued that the will only left "cash residue" to everyone named in the will and didn't dispose of the house. This meant that the house would be distributed according to the Estate Administration Act, and as the nearest blood relatives, only the nieces and nephews would inherit the house. Her second husband's relatives claimed Marjorie intended both her and her husband's relatives were to share her estate, including the house. The court decided that only Marjorie's nieces and nephews were entitled to the house.

If the will had been prepared properly, it would have clearly specified what was to become of the house.

The problem with using a will kit or fill-in-the-blanks will form is that they are usually too simplistic. They don't provide advice or warnings about potential problems, and the deceased can end up leaving behind a will that is unclear.

When this happens, the beneficiaries and/or executor may understandably want legal help to sort out the confusion. Your lawyer can advise you.



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