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Risks of “Do It Yourself” Estate Planning

Human nature being what it is, all of us at some point have a “do it yourself” approach. In our own minds we truly believe that we can do as good a job as the next person. This is especially true when we think the task at hand appears to be “simple” and “straightforward”.

In our eagerness to fix the problem, we many times jump to action without having considered whether our fix might actually cause more serious problems in time or whether the problem before us is really quite so simple to fix.

While many people might not even begin to think about “being their own lawyer”, there are individuals who believe that they can prepare their own documents, especially a Will or a document that purports to make changes to their previously executed Will, without the aid or the assistance of an attorney. After all, it is their document and their affairs. Who else would know more about what they want or how their affairs are to be ordered than them? Since they know what they want, why go through the time and expense of retaining an attorney? In many people’s minds the attorney will only muddy the waters or make the process far more complicated than they believe it needs to be. Or worse, the drafts prepared by the attorney will simply appear to “match” and to “mirror” what the individual would have written themselves. Why “waste money” for that, right?

In some cases, the person who has drafts his or her own documents may succeed and prepare a document that is legally valid and enforceable. Those instances are generally few and far between and probably owe more to luck than skill. For every

self-prepared document that is valid legally there are five that are not. Instead of fixing the problem, the person has only succeeded in creating a larger problem that will require far more time and money to try to fix than it would have cost to get done

right in the first place. Worse yet, in many cases they create a problem that can’t be fixed at all.

So what dangers lurk when you attempt to draft your own documents? Let’s take a look.

First, you may use words without understanding or knowing they are a “legal term of art”. While words or language may appear to have one meaning, in a legal context they may actually mean something quite different. What you say may be a lot different than what you meant to say. Similarly, you may not realize the effects of what you do or write. ** for example, did you know that crossing out one word or name on a Will and writing in a different one will likely result in your Will being declared invalid?. If you do that, the new language *isn’t* a part of the document, *neither* is the old language.

Second, you may utilize language that is imprecise or imperfect. You may know what you meant when you wrote it, but if the language appears in a will or other document that will be carried out upon your death or incapacity; you won’t be able to explain what you meant. If people are arguing over what you meant, which they likely will if it isn’t clear, your original language needs to be clear enough to resolve any arguments about what you meant.

Imprecise or imperfect language can also be the cause of a third danger, that being the creation

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a Happy New Year*

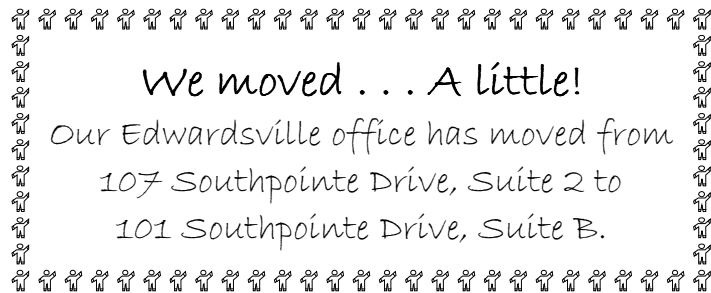
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of holes in your estate plan. You may have in mind what the situation is now and what you would want to happen when you die or become incapacitated, based on the way things are now. But the way things are now may not be the way they will be later. What you have now may not be what you have then. Someone who you may want to inherit from you, or act on your behalf may die before you. In short, life happens; and if your documents don't account for all the possibilities your wishes may not be able to be arranged. In the event your estate may distributed in a manner completely opposite to what you intended, or, your will is thrown out completely, there is a real risk that you will create inconsistencies within a document or between one of your documents and another, thereby creating a stalemate.

The final danger in drafting your own documents is that, even if you happen to draft them correctly, they may wind up being "invalid" (hardly worth the paper they are written on) if they have not been signed, witnessed and/or notarized correctly. Some may view these as mere "formalities". The laws of Illinois, Missouri and every other state make it clear that those "formalities" matter. By the way, there is not one set of requirements that applies to every type of document. Each document has its own set of requirements.

The upside of "doing it right" is when time comes to prove up your documents and carry out your intentions. If there are any problems your documents may be ignored (declared invalid) in whole or in part. Or, they may be upheld and carried out in a way you didn't intend and never would have wanted. Or, if you're lucky, they may eventually be upheld. Whatever outcome, there is a good chance that it will only happen after a long court battle that could take away a good chunk of your estate paying the very thing you were trying to avoid in the first place: attorney's fees. It's a lot more expensive to have two or more lawyers duke it out in court than it is to have one help you to make sure that your documents are well drafted and properly executed.

In short, drafting your legal documents is just not something that belongs in the "do it yourself" category. At best you'll save a little bit of money. At worst, your documents will be fought over and quite possibly thrown out at a time when it will be too late to fix the problems. That's just not a risk worth taking.



We moved . . . A little!

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107 Southpointe Drive, Suite 2 to
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