legally speaking

By **Patricia C. Marcin**, Esq. ©2018, Resident Writer

Wills, Trusts & Estates:

PLAIN AND SIMPLE

"DO-IT-YOURSELF" WILLS – A NOTE OF CAUTION

There are lots of "do-it-yourself" Will programs floating around on the internet. You may be able to save legal fees by drafting your own Will – at least up front; but in the long run, the cost usually comes after you die when your family and the court are trying to figure out what your Will provisions actually mean. Family members may argue over the meaning of the terms in your Will, and you may not have taken various tax implications into account. You may inadvertently choose a form which contains verbiage that is not recognized in New York, resulting in unintended consequences.

For example, people tend to use the word "heirs" when referring to their children and grandchildren as beneficiaries, but "heirs" does not have a defined meaning under the New York State trusts and estates laws. The term most people intend to refer to is "issue," who are defined under New York Law to be your descendants. Even if you make a disposition in your Will to your issue, you still need to decide whether the property will be distributed to your issue "per stirpes" or "by representation." This is best understood by an example.

Let's say that John has three children, A, B and C, and A has 2 children of her own – Mary and Sally, and B has 3 children of her own – Bobby, Ben and Bruce. If John dies leaving his estate to his issue, either per stirpes or by representation, and A, B and C survive him, each of A, B and C will receive one-third of his estate. If A and B predecease John, on John's death, with the bequest to issue per stirpes, A's one-third share will pass to her children (Mary and Sally), B's one-third share will pass to her children (Bobby, Ben and Bruce) and C will receive one-third of John's estate. If, however, A and B have predeceased John and John's Will provides for a bequest to his issue by representation, then C will still receive a one-third share of the estate, but A's and B's combined two-thirds share will be aggregated and divided evenly among all five of A's and B's children.

"Legalese" is real, and not using terms properly in a Will can have dire consequences. The courts are full of cases where families are arguing over what the terms of a deceased loved one's Will means. The probability of such arguments grows when someone without in-depth knowledge of the law of wills and trusts drafts a Will.

The above doesn't even scratch the surface of the issues that can arise if a Will is not properly drafted, from beneficiary disputes to unintended negative tax consequences to a Will being "thrown out" as invalid altogether. It really is worth investing the money to have your Will properly drawn by an expert in the area, rather than having your family pay dearly for the consequences of faulty drafting after you are gone.

If there is a trusts and estates topic that you would like to know more about, please feel free to email me at pmarcin@farrellfritz.com and I will do my best to cover it in a future column. My previous columns are available on **www.farrellfritz.com**.

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