A will is the best-known component of estate planning. People realize that they need to have a will even if they don't understand that they have an estate.

In movies, we see people writing out a will and leaving it for others to find. We also see ads for do-it-yourself wills. But is this allowed in Texas? Can you write your own will, or is a lawyer required? Let's take a look at what Texas law says on the issue.

You Don't Need a Lawyer, But You Need to Follow the Law Precisely

Estate administration and probate statutes in Texas do not require you to hire an attorney when preparing your will, but they do require you to follow specific rules. If you don't follow the legal prerequisites, your will won't be enforced and the government will distribute your property according to state intestacy laws rather than according to your wishes.

Working with an experienced estate planning attorney ensures that your will is enforceable. Just as important—advice and guidance from a lawyer can ensure that the provisions in your will accomplish what you want to achieve. When you create your own will, unless you are extremely familiar with probate procedures, your words could be interpreted differently than you intended, and you could create extra work and expense for loved ones. Or if a provision in the document is subject to different legal interpretations, the wrong people could receive your property or end up in charge of your estate.

Handwriting Your Own Will

One of the confusing aspects of preparing a will in Texas is that the requirements are different depending on how the will is written on the page. Texas is one of the few states that recognizes informal holographic wills, which are wills written out entirely in the handwriting of the person creating the will. So, that means you can write out your own will and a court will enforce it after your loved ones go through additional steps in court.

To create a valid handwritten (holographic) will, you must be of legal age and "sound mind," and you must specifically intend to write a will. You can indicate this by writing something at the top of the page, such as "Last Will of ___," and adding language indicating who you are and what you are doing.

Unlike traditional wills, holographic wills do not need to be formally witnessed. While this might seem to make things easier, it means that it can be very difficult for your loved ones to prove that your handwritten will is genuine and that you were in the right frame of mind when you wrote it. They will need to present evidence in probate court to show that the handwriting is authentic, and someone who disagrees with the provisions in the will can challenge the validity on a variety of grounds.

When you work with an attorney to prepare a formal will, your attorney can make sure that witness requirements are fulfilled and that provisions are included to make the will "self-proving" so that it is not necessary to hold a court hearing just to have the witnesses testify as to the validity of the will.

Preparing a DIY Will

Since Texas law does not require you to work with a lawyer when preparing your will, it is theoretically possible to create a valid will using software or a template from a book and this DIY document might operate the way you want it to. But it might not. If you missed a legal requirement, the probate court might refuse to honor your will. Or if you included the wrong provisions, loved ones could be left out or receive assets that you never intended to give. If there is a problem, no one will know until it is too late to fix it.

When you work with an attorney to create a will instead, your attorney helps you understand the big picture so that your will operates the way you want it to and coordinates with the way the ownership of your property is structured. For instance, if you have beneficiary clauses on accounts or co-ownership of certain assets, these features preempt provisions in a will or trust. Your attorney can help ensure that all of your assets are set up to pass to others in accordance with your wishes.

Schedule a Free Consultation to Learn How The Nordhaus Firm Can Make the Process of Will Preparation Simple and Secure

The bottom line is that while you can write your own will in Texas, it is usually not a good idea. At The Nordhaus Firm, we have extensive experience guiding clients through the probate process after a loved one has passed away and we've seen the problems that result when someone prepares their own will.

To find out how we can help safeguard your loved ones with one of our affordable plans, we invite you to schedule a free consultation. Just call 214-726-1450 or contact us online to get started.