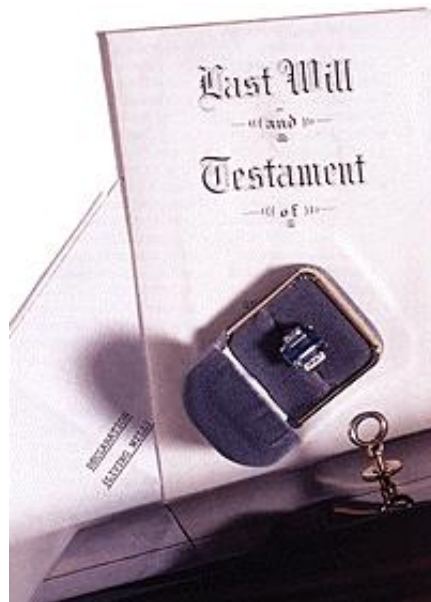


Basic Wills & Trusts Drafting in Tennessee



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Chapter 1

PRACTICAL TIPS IN DRAFTING SIMPLE WILLS IN TENNESSEE

I. Why Wills Drafting?

There probably is no lawyer's task that is more "bread and butter" than the drafting of a basic Will. Virtually every licensed attorney – whether litigator or in-house corporate lawyer – is asked at some point to draft a Will. Many attorneys who try to limit their practices to other specialties sometimes find it difficult to refuse a good client who asks, on the side, for help with a Will.

Fortunately, the fact is that there is no reason why a general practitioner or non-tax attorney cannot feel confident in drawing up Wills for clients, so long as the lawyer makes sure that the estate is not taxable and that there are no unusual circumstances that necessitate complex planning and drafting. Indeed, many trial lawyers have developed a nice profitable sideline practice in basic Wills drafting. If the lawyer accumulates a good bank of forms and employs a reliable paralegal or secretary, there is no reason why this "sideline" practice cannot remain profitable without distracting from the lawyer's main practice focus.

Of course, the overriding caveat is to insure that the client's estate does not trigger any significant tax consequences. The second chapter of this text guides the lawyer in asking the right questions in order to insure that the estate is indeed "simple" and not taxable. Once this assurance is secured, a relatively simple routine, as described in this chapter, can be followed to 1) discuss the client's wishes, 2) prepare the rough draft that anticipates potential points of contention or ambiguity, and 3) oversee the prompt execution of the Will.

In any event, the bottom line is this:

- 1) Whether you practice in real estate, torts, or securities, you can periodically expect your good clients to ask you for a Will.
- 2) You can produce a good side income from basic Wills drafting if you develop a good standard procedure for handling these files. (You can produce even more income if you're willing to handle probate proceedings arising from these documents.)
- 3) On a more personal level, many stressed out lawyers often find that they actually derive a lot of pleasure from these short projects – primarily

because these files are non-adversarial, and the clients are usually grateful for the peace of mind they receive from the lawyer's work.

II. Using Forms and Keeping the Boilerplate Current

Most lawyers, when preparing simple, garden-variety Wills, tend to rely heavily on pre-existing forms that have been used in their office for years. Certainly there is nothing wrong with this. In fact, extensive use of a good form library is essential to managing a profitable practice in Wills drafting. However, the standard precautions about forms should be heeded. Always take the time to customize the form for the client's particular needs. In addition, set aside a time each year to review all of your forms. Read them with a critical eye to insure that new statutes or court decisions over the past year have not changed the effect of some provisions.

Perhaps even more importantly, the lawyer should re-read these forms each year in order to re-familiarize himself with what the form actually says. Indeed, it is the very nature of boilerplate that a form may contain several pages of standard text to which the lawyer normally gives very little thought. In fact, most lawyers, in their early years, are guilty of blindly adopting a form they obtained from an esteemed mentor or from a form book. For years, they simply pull up this form whenever needed and proceed to "fill in the blanks" or merely change the names and dates. Eventually, however, these lawyers find themselves in an awkward predicament when they are unable to explain something in the Will (a document they purported to have drafted themselves!).

A prime example of this embarrassing scenario: Many Wills forms found in form books or on-line contain a lengthy section setting forth the powers granted to the executor. Oftentimes this provision runs several pages long and sets forth every conceivable power Bill Gates' executor might ever need. (As discussed later, this is probably overkill for most basic Wills, since State statute automatically confers upon executors every power they could possibly need during probate.) A popular Will form distributed by several commercial banks many years ago to every lawyer in the State contains such a provision. In fact, this particular form spells out twenty-two such powers of the executor. The 22nd power reads as follows:

The Executor hereunder shall have the power to buy or sell any stock or security options, including but not limited to calls, puts, straddles, spreads, strips, or straps, whether over any recognized exchange or over the counter market and whether or not covered or uncovered.

More than one red-faced lawyer who blindly used this form has either had to feign some understanding of this gobbledygook or otherwise admit that they had no idea what it meant. Most of them were not even aware that this language was in the form until the client pointed it out to them.