

## Holograph Wills

The **Wills Act** makes it surprisingly easy for a person to make a will. A person can make their own will without formality by writing out their intentions in their own handwriting and signing it at the bottom. No witnesses required. Most famously (among estate lawyers anyways), a Saskatchewan farmer years ago found himself pinned under a tractor. Recognizing the bind he was in, he had the presence of mind to scratch out a will on the tractor's fender with his pocket knife. Soon after, he succumbed to his injuries and the fender was introduced to probate. By the terms of his will—such as it was—his entire estate passed to his wife. (For those who enjoy such curiosities, I understand the fender in question is now on display at the Law Library at the University of Saskatchewan.)

Not all holograph wills (the legal name given to a will written entirely in the maker's own handwriting) are produced in such dramatic fashion. Most of them are written out by people who are just trying to save themselves a bit of money. In my work, I've seen quite a few holograph wills and I've introduced a fair number of them to probate. For the most part, in the cases I have been involved with, things have worked out OK. As a general rule, however, I don't encourage the use of holograph wills. The potential for errors and unintended consequences is simply too great.

There is another general rule that I follow with respect to wills (holograph or otherwise): the simpler, the better. If the testator's intentions are simple to understand, there is less likelihood that they will be misunderstood. Yet it is in the holograph wills that some people have left that I have found the testators to be the most creative and complex. Maybe in writing out their wishes, they knew what they wanted to achieve, but something got lost in the reduction of these intentions to writing. In attempting to provide for various contingencies (if this person dies, then I want that person to get this item, unless he doesn't want it, in which case these other people should each get a part if they are all still alive), their chosen language has sometimes left the executor scratching his or her head. That is, if the writing can be read at all. Not all testators have been gifted with good penmanship. Some of the writing has been almost impossible to interpret.

While I subscribe to the rule that simpler is usually better, if a person wants to incorporate some creativity into their will, I'm happy to go along with the plan. It's their stuff to give away and if they want to make a statement through their estate planning arrangements, so be it. I'll prepare the documents in the best way that I can, in a way that is (hopefully) clear to understand. At a minimum, the words will be legible.

Do you need a lawyer to write your will? The answer is "No". Nor do you need a barber to cut your hair, a surgeon to remove your appendix, or a dentist to pull

your teeth. All of these things are things you can do yourself, but most people would agree, some things that are best left to the experts. Will writing is one of them.