

## **Pitfalls of Changing Your Own Will**

If you have taken the time to make a properly make a will and if you want to make changes to it, it is worth the time, expense and effort to see to it that those changes are properly made also. I've seen a number of people who after having incurred the expense of making a will properly have attempted to make changes to the document on their own. Most of these attempts have failed. The persons attempting the changes went to their graves thinking they had made modifications to their will when in fact they had not.

Changing a will is not simply a matter of penciling in the desired changes and having those changes initialled by the testator. There are certain formalities that must be observed, the most important of which being the presence and attestation of two independent witnesses to the making of the changes. Too often these formalities are overlooked and the attempted changes must be disregarded, much to the chagrin of the intended beneficiaries and occasionally to the surprise (and possibly delight) of those intended for disinheritance.

Consider the case of the deceased woman that I shall refer to as Emma. Emma made a will with her lawyer, directing that her estate be divided among her sisters and her nieces and nephews. Hers was a large family with many nieces and nephews, and the estate was not insubstantial. She decided at some later point that what she really wanted to do was leave her estate to her sisters, so out came the black marker and on the original will the words "nieces and nephews" were struck out. (Not entirely struck out—you could still see what had been written originally. This proved to be rather important.) Much to the relief, I'm sure, of Emma's nieces and nephews, their attempted disinheritance was disregarded since the changes to the will were neither signed nor witnessed, nor could anyone say for certain that it was in fact Emma who took the black marker to the original will.

As interesting to me was the case of Emma's will, it was the case of Bertha's will that wins the prize. Bertha made a will with her lawyer leaving her estate to her sisters and brothers. Some time later, Bertha decided that was not how it was going to be and purported to revoke her will by writing "CANCELLED" across its face. The attempted revocation was ineffective because it was not witnessed. (Bertha should have just torn her will up—that would have worked). But that didn't matter, because although Bertha wanted to revoke her will, she didn't make a new one to take its place. Without a new will, Bertha's siblings would have inherited the estate anyways on Bertha's eventual intestacy. (Bertha had no spouse or children of her own.) I am guessing that Bertha never considered this. But the story doesn't end here: Bertha later changed her mind about disinheriting her siblings, took out the will she thought she had cancelled (why she kept it, I don't know) and wrote on it that it was to be reinstated. And while the will had never been cancelled, the writings would have had the effect of reviving it. In logic that might make sense to probate lawyers, the revival would have been considered effective despite the absence of witnesses. But none of this really mattered, because the will was never revoked in the first place, and even had it been, the end result would have been the same. All in a day's work at the estate bar.

In case there is any doubt in all of this, here's my point: If you're thinking about making changes to your will, take the guesswork out of it. Contact your lawyer and get it done right.