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DOES YOUR WILL REFLECT YOUR FINAL REQUESTS?

Clear Intentions, Properly Recorded and Witnessed Documents Will Ensure Your Final Wishes Are Observed

(VIRGINIA BEACH, VA – November 2013) – The differences between properly and improperly written wills can sometimes be measured in dollars and cents, in numbers of days, months or years, and other times by degrees of anger, frustration and disappointment.

Attorney M. Bradley Brickhouse has seen the good, the bad and the ugly when it comes to last wills and testaments. He regularly cautions people about "almost wills" using real world cases handled by his Virginia Beach based law firm, Oast & Taylor, a recognized leader in estate planning, trust administration and elder law. The key to making one's final wishes known requires that a formal, legal instrument -- a will -- is properly drafted and witnessed.

"Traditionally, Virginia has recognized two ways to execute a valid will," Brickhouse explained. "The first must be made in writing and signed by the testator and at least two competent witnesses. The second, a holographic will, is valid if entirely handwritten and signed by the testator."

"That being said, the best way to ensure your wishes are properly documented and in compliance with all Virginia law is to speak with an estate planning attorney," Brickhouse said.

For years, Virginia required strict formalities while executing documents for consideration as valid wills. The first thaw to this doctrine came in 1990, when a revision was made to the Uniform Probate Code (UPC) to reflect what was informally taking place in the courts. That change, commonly known as the "dispensing with formalities provision," relaxed some of the more stringent measures to allow for certain instances when documents not in strict code compliance could be considered validly executed.

In 2007, the General Assembly approved Virginia Code § 64.2-404, which mirrored the UPC's 1990 position. As a result, courts may now treat a document, or writing not in strict compliance with the Code of Virginia, as if it had been shown a genuine expression of the person's intent. To clear this threshold, "clear and convincing evidence" must be shown that a writing was intended by the author to be considered as a will (or a revocation, alteration, or a revival of a formerly revoked will).

Oast & Taylor attorneys have considerable experience with the "dispensing formalities provision" and have successfully probated such documents for clients, thus permitting their intentions to be followed as though their wills had been properly executed, Brickhouse said.

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"Virginia Code § 64.2-404provides opportunities to comply with a testator's intention, even if the last will and testament does not strictly comply with formalities," he explained.

6 things to remember when it comes to lawful, enforceable wills:

1. Discuss your desire with members of your family after signing the document; consider providing a copy to your family, or at minimum the executor of your estate ;

2. After death, if the signed document was not properly witnessed (a statutory formality), the probate process won't allow the will, even if your family knows your intentions;

3. In 2007, the Virginia General Assembly approved certain measures to dispense with the formalities provision, which in certain instances, allow documents and writings that are not in strict compliance to be treated as validly executed;

4. Within one year of the person's death, it must be established by "clear and convincing evidence" that the author intended the document or writing to constitute his or her will, or a revocation, an alteration, or a revival of a formerly revoked will;

5. Remarried couples with spouses and children from previous marriages and separate wills present special complications, especially if the surviving spouse creates a new will, a partial revocation or an alteration to the original will;

6. Attorneys must file with circuit courts asking that any documents not in strict compliance with the Code of Virginia should be considered as if they had been executed in compliance with the Code of Virginia. The court must find by clear and convincing evidence of the testator's intentions to allow such documents to be admitted to probate.