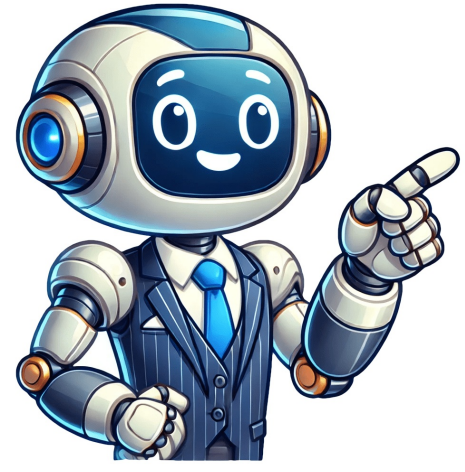


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Tressler & Associates has been a part of my real estate team for a long time, and I owe them so much for all they do for me and my clients! Our Vision You are the reason we do what we do. We care about whats happening in your life, and we are honored to be part of it. We are a team who listens, follows up and keeps you informed. We answer when you call yes, a real human answers the phone, and we return your communications promptly. We utilize todays best software to strengthen and enhance our communication and case management capabilities. This means you have access to our client portal, where you can communicate securely with your attorney and receive any updates on your matter. We all make better decisions when were fully informed. We dont bury our pricing in long legal contracts and fine print, instead you can learn what costs to expect right on our website. 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You do not have to comply with the license for elements of the material in the public domain or where your use is permitted by an applicable exception or limitation . No warranties are given. The license may not give you all of the permissions necessary for your intended use. For example, other rights such as publicity, privacy, or moral rights may limit how you use the material. In Ontario, a will that is wholly handwritten by a testator is called a holograph will. Holograph wills are exempt from the statutory requirement that a will be witnessed by at least two people, who each subscribe the will in the presence of the testator.[1]RequirementsThe requirements of a valid holograph will are set out in section 6 of the Succession Law Reform Act (the SLRA)[2], which states that:A testator may make a valid will wholly by his or her own handwriting and signature, without formality, and without the presence, attestation or signature of a witness.i. 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Where there is no signature (or initials) beside the alteration, the issue becomes one of determining when the alteration was made. If the alteration was made at the time of execution of the holograph will, the change is valid. If the alteration was made after the execution of the holograph will, the alteration would be invalid.Ontario Case LawLaframboise v. Laframboise[10] (2011)In this case, the applicant challenged whether a handwritten document by her deceased husband constituted a valid holograph will. The document in question was entitled The Informal will and Last Requests of Adam Laframboise, and contained instructions regarding the disposition of his assets. The issue arose as a result of the inclusion of the words informal and requests which suggest that the document could not be a full and final disposition. Despite the inclusion of these words, the document began with Hereby follows my will and last requests and ended with please honour what I have stated here. In consideration of the document as a whole, it was found that the document created a fixed and final disposition, and that the use of the word informal suggested merely that it was handwritten, unwitnessed, and made without the assistance of a lawyer.Niziol v. Allen[11] (2011) This case also dealt with testamentary intention. The testator had executed a formal will in 1998. In 2001, she prepared a hand-written document that changed the distribution of her estate.The validity of the handwritten document as a holograph will was challenged. 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Laframboise 2011 ONSC 7673, at para 13.[9] SLRA s.18(1)(Subject to subsection (2), unless an alteration that is made in a will after the will has been made is made in accordance with the provisions of this Part governing making of the will, the alteration has no effect except to invalidate words or the effect of the will that it renders no longer apparent.(2)An alteration that is made in a will after the will has been made is validly made when the signature of the testator and subscription of witnesses to the signature of the testator to the alteration, or, in the case of a will that was made under section 5 or 6, the signature of the testator, are or is made,(a) in the margin or in some other part of the will opposite or near to the alteration; or(b) at the end of or opposite to a memorandum referring to the alteration and written in some part of the will.[10]2011 ONSC 7673.[11]2011 ONSC 7457 (Niziol).[12]Niziolat para 11.[13]2008 CanLII 39783 (ON SC).Authors: Manpreet Kaur and Krystyne Rusek, lawyers You have a document made by the deceased. Is it a valid will?Handwritten (holograph) wills & codicilsIn Ontario, the requirements for a valid holographic will are:1. The will must be entirely in the handwriting of the testator and signed by the testator at the bottom. Any gifts before the signature are void.2. The will must be a full and final expression of the testator's intent.3. The will must be signed at the end of the document and this will give effect to any disposition that comes before the signature.4. Anything that follows the signature will not take effect.5. As well, any disposition or direction inserted after the signature was made will not take effect.6. Full and final expression of intentionSeparate and apart from the above two formal requirements set out in the SLRA, case law has established that the contents of a holograph will must reflect that the testator possessed the necessary intention that it be a fixed and final disposition upon death, and not merely some other expression of their wishes.[7] The onus falls on the party alleging the document to be testamentary to show, by the content or by extrinsic evidence that it reflects this intention.[8]Handwritten AlterationsHandwritten alterations to wills are governed by section 18 of the SLRA.[9] Where a handwritten alteration is made to a formal will, the alteration must meet the same formality requirements set out in s. 4(1) of the SLRA, i.e. the alteration must be signed by the testator and witnessed by two witnesses, who each subscribe as witnesses to the alteration.In the case of alterations to holograph wills, a handwritten alteration will only require the signature of the testator. 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Laframboise 2011 ONSC 7673, at para 13.[9] SLRA s.18(1)(Subject to subsection (2), unless an alteration that is made in a will after the will has been made is made in accordance with the provisions of this Part governing making of the will, the alteration has no effect except to invalidate words or the effect of the will that it renders no longer apparent.(2)An alteration that is made in a will after the will has been made is validly made when the signature of the testator and subscription of witnesses to the signature of the testator to the alteration, or, in the case of a will that was made under section 5 or 6, the signature of the testator, are or is made,(a) in the margin or in some other part of the will opposite or near to the alteration; or(b) at the end of or opposite to a memorandum referring to the alteration and written in some part of the will.[10]2011 ONSC 7673.[11]2011 ONSC 7457 (Niziol).[12]Niziolat para 11.[13]2008 CanLII 39783 (ON SC).Authors: Manpreet Kaur and Krystyne Rusek, lawyers Its not hard to make a valid will. In Michigan, all a will needs in order to be valid under the law is to be in writing; signed by the person making it (or by someone else at that persons conscious direction); and signed by two witnesses to either the signing of the will or the testators acknowledgment of their signature on the will. Of course, the testator (the person making the will) must have the legal capacity to make a will, also known as testamentary capacity? Most people observe the formalities above with the help of an attorney. There are good reasons for that, which well discuss. But sometimes a will that does not meet the criteria for a Michigan will can still be valid. Handwritten wills, also called holographic wills, are recognized in a number of states, including Michigan. What is a Holographic Will? A holographic will is a will which is dictated, signed by the testator, and of which no material part is in the testator's handwriting. It does not need to be witnessed. It is also necessary that it be clear that the testator intended that the handwritten will to be his or her last will and testament. Evidence of that intent may come from language in the will, or from extrinsic evidence (evidence outside of the will). Theoretically, you could grab a pen and a bar napkin and jot yourself down a valid holographic will while you enjoy a cocktail at your favorite watering hole. The question is not, Can you do a handwritten will, or Is a handwritten will valid in Michigan, but, What is my best possible option for achieving my estate planning goals? Unless youre trapped in an isolated cabin with no food, no way to call for help, and no escape, the answer to that question is unlikely to be a holographic will. So before you reach for that cocktail napkin, read the rest of this blog post to discover why. Three Reasons Not to Make a Holographic Will in Michigan Its easy and inexpensive to make a holographic willso why dont more people do it? The answer lies in the reasons most people make a will in the first place: to provide for their loved ones and protect their financial resources. While a holographic will may be better than no will at all, it may also create some of the very problems you wanted to avoid. Because a holographic will is not witnessed by others, there is a higher likelihood that a family member will contest or challenge the will, alleging that it was not really written or signed by you. Will contests are costly, time-consuming, and often create or increase conflict between family members. All of that is the exact opposite of what you are seeking to achieve by making a will. A second problem with a holographic will is that you might easily use language that is unclear, incomplete, illegible, or which conflicts with other beneficiary designations. If the wills meaning is not plain, it could lead to the need for probate litigation, which could consume estate assets and spark conflict among your loved ones, who might argue for different interpretations of the wills language. Holographic wills are also rarely as thorough as wills prepared by an attorney. For instance, you may not write a will that leaves any property to your spouse and two new pups, neglecting to say what you want to happen if any of them die before you. What if the gift is split among the two survivors, or among the deceased bequest's heirs? The answers are uncertain, and you can guess what happens nextthe family members head back to court, consuming time and money, and possibly relationships. Lastly, any will that is submitted to probate needs to be authenticated. That is, it needs to be established that it really is the testators last will and testament. Authentication is typically more difficult with a holographic will because often the only person who was present when it was made was the deceased. Avoiding the Problems Associated With a Holographic Will If you briefly considered making a holographic will in order to save time and money, hopefully the issues described above have given you second thoughts. An estate plan is an investment in your families future. The legal problems caused by a handwritten will could easily end up costing more in legal fees than simply making a comprehensive estate plan in the first place. In addition, having an estate plan prepared by an experienced attorney can help you prevent the family discord that an unclear handwritten will might cause. To learn more about holographic wills and Michigan estate planning in general, please contact Suzanne R. Fanning PLLC to schedule a consultation. In Ontario, a will that is wholly handwritten by a testator is called a holograph will. Holograph wills are exempt from the statutory requirement that a will be witnessed by at least two people, who each subscribe the will in the presence of the testator.[1]RequirementsThe requirements of a valid holograph will are set out in section 6 of the Succession Law Reform Act (the SLRA)[2], which states that:A testator may make a valid will wholly by his or her own handwriting and signature, without formality, and without the presence, attestation or signature of a witness.i. Wholly in the handwriting of the testatorAn essential aspect of a holograph will is that it to be wholly in the testators own handwriting. Partially handwritten wills, such as fill-in-the-blank forms, do not meet the requirements of a holograph will. 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Horn (2008)[13]This case involved hand-written alterations to a type-written and properly executed will and codicil. The alterations were neither signed nor dated and therefore did not meet the requirements of the SLRA.The Court addressed the question of whether it had the discretion to dispense with the formal requirements under the SLRA, where there is clear evidence of testamentary intention. The Court held that, in contrast to other jurisdictions, Ontario courts have no such discretion. The Court held that the handwritten alterations were therefore not valid, and further that they did not constitute a valid holograph codicil.ConclusionsThe area of holograph wills is rife with acrimonious family disputes and protracted litigation. 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Laframboise 2011 ONSC 7673, at para 13.[9] SLRA s.18(1)(Subject to subsection (2), unless an alteration that is made in a will after the will has been made is made in accordance with the provisions of this Part governing making of the will, the alteration has no effect except to invalidate words or the effect of the will that it renders no longer apparent.(2)An alteration that is made in a will after the will has been made is validly made when the signature of the testator and subscription of witnesses to the signature of the testator to the alteration, or, in the case of a will that was made under section 5 or 6, the signature of the testator, are or is made,(a) in the margin or in some other part of the will opposite or near to the alteration; or(b) at the end of or opposite to a memorandum referring to the alteration and written in some part of the will.[10]2011 ONSC 7673.[11]2011 ONSC 7457 (Niziol).[12]Niziolat para 11.[13]2008 CanLII 39783 (ON SC).Authors: Manpreet Kaur and Krystyne Rusek, lawyers In my prior two blogs, I discussed the witness requirements in Tennessee for a traditional, typed out will, and a nuncupative will. Now, let us turn our attention to holographic wills. Holographic wills are wills that are handwritten. Tennessee does recognize holographic wills that meet the statutory requirements (not all states recognize them). The statute governing the requirements for a holographic will in Tennessee is very short. T.C.A. 32-1-105 states the following: No witness to the will is necessary, but the will must be in the handwriting of the testator. The will must be signed at the end of the document and this will give effect to any disposition that comes before the signature.[4] Anything that follows the signature will not take effect.[5] As well, any disposition or direction inserted after the signature was made will not take effect.[6]iii. 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The main issue was whether the documents reflected a deliberate or fixed and final expression of intention as to the disposal of property upon death.[12]The Court found that the language of the document clearly showed testamentary intent in the following ways:The introductory language was consistent with how testators ordinarily identify themselves.The dispositive language used reflected an intention that the disposition be final.The document identified the beneficiaries and directed that they be the only beneficiaries.The document specifically created a trust for one son but not the other, which suggested testamentary intent.The handwritten document was found to be a valid holographic testamentary instrument.The Court then found that the 1998 formal will and the 2001 holograph will could not stand together. As a result, by implication, the Court found that the 2001 holograph will revoked the formal 1998 will.CIBC Trust Corporation v. 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