DIY Estate Planning: A Cautionary Tale



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By Lee Carpenter

Ann Aldrich was a frugal lady. When it came time to write her will, the Florida resident decided to use “E-Z Legal Forms” and leave everything to her sister, Mary. By preparing the will herself, Ann thought she would save the cost of using a lawyer and achieve the same result. What could possibly go wrong?

As it turns out, plenty. The resulting will was ambiguous, leading to confusion, a family squabble, and ultimately, a trip to the state Supreme Court.

The fatal flaw lay in the form Ann had purchased. It included no “residuary clause”—a standard will provision that disposes of property not otherwise addressed in the document, including property acquired after the will is signed.

In an effort to be thorough, Ann listed the specific items she wished to bequeath to her sister—her Florida home and its contents, a rollover IRA, a life insurance policy, a car, and various bank accounts. The E-Z Legal Form should have taken it from there. But the fill-in-the-blank document failed to say what should happen to everything else Ann owned.

As it happened, Mary, the sister Ann intended to be her primary beneficiary, died first, leaving her estate to Ann. These additional assets, which were now part of Ann’s estate, included cash and real estate—assets Ann couldn’t have mentioned in her will because she didn’t own them at the time.

Ann had named her brother, James, to receive the listed assets if Mary died first. When Ann died a few years later, James thought he should inherit Ann’s entire estate.

But Ann’s two nieces disagreed. They argued that because the will was silent as to the cash and real estate Mary had left Ann, those assets should pass to the nieces through the rules of intestacy. In other words, they reasoned that any assets the will specifically failed to mention should go to Ann’s natural heirs—as though she had died with no will at all.

Legal wrangling ensued, and attorney fees quickly mounted. The Florida Supreme Court eventually heard the case and agreed with the nieces. The will conveyed only certain assets, the court said, and the rest of Ann’s estate would pass to the nieces through intestacy.

Ann’s well-intentioned frugality backfired and it cost her family both money and heartache.

In her concurring opinion, Florida Supreme Court Justice Barbara Pariente cited the dangers of relying on an off-the-shelf form for estate planning:

“I therefore take this opportunity to highlight a cautionary tale of the potential dangers of utilizing pre-printed forms and drafting a will without legal assistance,” the judge said.

“As this case illustrates, that decision can ultimately result in the frustration of the testator’s intent, in addition to the payment of extensive attorney’s fees—the precise results the testator sought to avoid in the first place,” she said.

The simple fact is that an estate plan is more than a will, and a ready-made form is no substitute for legal advice.

A proper estate plan takes every aspect of your finances into account. This includes the extent of your assets, how property is titled, transfer-on-death provisions, beneficiary designations, and likely tax consequences. The completed plan will be tailored to your unique circumstances and leave you prepared for whatever lies ahead.

The good news is that having an attorney prepare your estate plan is easy. For many people, only two meetings are necessary—one to discuss your planning goals and another to execute the documents. This vital task can prevent your estate from becoming its own cautionary tale.