

Legal Notes: February 2012

Why pay a lawyer to draft a will? Draw up a power of attorney? Get a lease? A Google search will find thousands of forms anyone can use. Just download it and fill it in, then you're good to go. Right?

Wrong. Forms are risky. Any lawyer worth his or her salt knows this. Forms in the hands of lay people may be just ticking time bombs of problems.

The first problem is that some forms can be used in just about any state while others cannot. For example, residential lease provisions that may be acceptable under Illinois law will be unenforceable in Wisconsin, which could then jeopardize the validity of the entire lease.

Another problem is that people simply fill them out incorrectly. Forms can use words and phrases that a person doesn't know or misinterprets incorrectly. Do most people know exactly what a personal representative or attorney-in-fact is?

Finally, you may get your hands on a good Wisconsin form and fill it out correctly but still make a mistake. For example, you may want to name your three sons as power of attorney together but you don't want to favor one over the other. So you complete three separate forms, naming each as power of attorney. While any individual form may be OK, the three together will create a major problem.

A variation on the form problem is the cut and paste disaster. Here, a person takes a form and cuts out language and pastes it into another form. A good written contract (which essentially is what a form is) hangs together, meaning that all the parts make sense in relation to each other. Words and phrases are consistent throughout the document. A referral to a particular paragraph is accurate. When you cut and paste, you risk introducing a word or phrase that may have been accurately defined in the source document but isn't now, in the new combined document. Also, the pasted in paragraph may refer to a paragraph found in the original document that isn't in now in the source document. These issues create ambiguity and ambiguity is what a good contract tries to avoid.

While it may be silly to pay a lawyer to fill out what may seem to be simple form, that money will be money well spent when it comes time to interpret that simple form and hope that it was completed correctly.