

# Asset Protection Law Newsletter



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**A FREE LEGAL UPDATE FOR ELDERS AND SAME SEX PARTNERS WHO SEEK ASSET PROTECTION ♦ MAY 1, 2014 EDITION**

## DO-IT-YOURSELF WILL LEADS TO UNWANTED RESULT

If you choose to write your own will, you run the risk of not having your assets and property distributed the way you want upon your death.

Howard Kaufmann apparently wanted his estate to go to two of his five children. Instead of seeking out an elder law attorney to advise him on drawing up an estate plan, he decided to write his own will.

The will gave his pickup truck to his daughter Romaine and his summer property to his son David. Mr. Kaufmann also wrote in the will that he was intentionally leaving out his other three children.

The problem with the will was that Mr. Kaufmann did not specify what to do with the remainder of his estate (called a "residuary clause").

While Mr. Kaufmanns probably intended that the rest of his estate – which totaled \$217,000 – would go to his favorite children, he didn't state that in the will.

Because the will had no residuary clause, the remainder of Mr. Kaufmann's estate passed under Florida state law that specifies who inherits when there is no will. Under Florida law, this meant that the rest of Mr. Kaufmann's estate would be divided equally between his five children.

A state court confirmed this result, but only after the children had spent much more in attorney fees than their father would have paid a lawyer to have his will done properly.

While you may save some money drafting your own will, you are in danger of making mistakes that can cause unneeded conflict and don't get the result you want. Always seek the advice of this your elder law office before creating an estate plan.

Howard Kaufmann probably thought he could save some money by writing his own will without getting the advice of a lawyer.

It seemed simple enough. He had five children but was close to only two of them, his son David and his daughter Romaine. He wanted to be sure that Romaine got his red pick-up truck, so he put that in his self-drafted will. He also wanted to make sure that David got his summer property in Palm Beach, so he put that down as well.

Apparently he didn't want anything to go to his other three children so he wrote the following sentence in his will: "The failure of this will to provide any distribution to my children, Mary Smith, Sandra Wilson, and Deborah Goldstein is intentional."

More likely than not, this meant he wanted the rest of his estate (worth \$217,000) to go to his favored children, David and Romaine. But he didn't specifically say that in the will he wrote for himself. And now we will never know for sure what he wanted, because Mr. Kaufmann died on August 3, 2011.

Romaine did get the truck. And David did end up with the Palm Beach summer property. But Howard's will failed to specifically describe who should get the remainder of his estate. Judge's call this a "residuary clause." Howard's will didn't have one.

When there is no residuary clause, the undesignated portion of the estate goes according to the laws of intestacy. Those are the state laws that say who inherits from you if you didn't leave an adequate will, trust, or other instructions.

In Howard's case, the Florida intestate laws say that his remaining estate should go equally to all five of his children.

Of course Howard didn't know that. He wasn't a lawyer. He probably thought that the remainder of his estate would go to David and Romaine. But the law can be very demanding. It contains traps for unwary people like Howard. He made a mistake that anyone could make. And his children David and Romaine ended up paying for it.

Now it's bad enough that Howard's carelessness in writing his own will meant that all of his children ended up in a lawsuit. And that the lawyer's fees were many times more

than Howard would have paid to have legal help to write his will.

Even worse, his favored children lost the lawsuit, and 60% of his estate went to the three children he probably wanted to get nothing. That's the big problem with wills – if you make a mistake, or are unclear about something – it's really hard to fix it when your will is read after you are dead.

Don't be penny wise and dollar foolish. Don't create a mess for your family as you leave this life behind. Save your family from unnecessary conflicts and expense. See a lawyer for advice when you are ready to prepare your will.

If you live in Broward County, Miami-Dade or Palm Beach Counties, you can make sure your family doesn't end up in mess like Howard's by calling the elder law and estate planning lawyers at

**LAW OFFICES OF MARK A. ROSEMAN  
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There is no charge for your initial appointment.

## News You Can Use

### 2014 FLORIDA MEDICAID LIMITS

Gross Monthly Income Limit for Medicaid Applicant:	<b>\$2,163.00</b>
Personal Needs Allowance:	<b>\$35.00</b>
Asset Limit (Individual):	<b>\$2,000.00</b>
Asset Limit (Couple):	<b>\$3,000.00</b>
Medicare Part B Premium:	<b>\$104.90</b>
Community Spouse Resource Allowance:	<b>\$117,240.00</b>
Minimum Monthly Maintenance Income Allowance:	<b>\$1,938.75</b>
Maximum Monthly Maintenance Income Allowance:	<b>\$2,931.00</b>
Monthly Personal Needs Allowance:	<b>\$35.00</b>