

FAQ: Wills & Wishes

Teaching workshops about middle-class milestones, I answer a lot of questions for people. This is one of them.

Question: Can a Will written and executed in another state be recognized in Texas?

Answer: Yes. An out-of-state Will can be admitted to probate in Texas.

With the heavy migration of people from other states to Texas, many bring with them a Last Will that was drafted and executed elsewhere. Texas law is generally liberal in recognizing these Wills. However, Texas law also contains a number of provisions that make the Texas probate process go smoothly. Wills from other states may not take advantage of these provisions.

One great advantage of the Texas probate system is the independent administration. With an independent administration, the executor does not need to post a bond and may act without court supervision. However, the key to an independent administration is for the Will to request it. Wills from outside Texas almost never request an independent administration. Dependent administration is more costly and time consuming.

Another advantage of the Texas probate system is the self-proved Will. Texas lawyers append an affidavit to the Will that verifies its due execution. With a self-proved Will, the executor and her lawyer can attend the probate hearing alone. Many out-of-state Wills do not include the self-proving affidavit. For those Wills, the executor must bring one or two witnesses to testify at the hearing.

Finally, out-of-state Wills sometimes name the drafting attorney or a bank as executor. This is unnecessary and can further complicate the probate process.

These are just a few examples of the advantages of the Texas probate system.

To take full advantage of the Texas probate system, it is wise to update your out-of-state Will to comply with the Texas Estates Code.

Sources: Texas Estates code §§ 251, 305, 505.

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