Will in Probate: Who is Notified
Lynn Brenner, Family Finance, March 11, 2007

*I have no children or spouse. My will lists my brother and sisters as my beneficiaries. Based on your Feb. 18 column, my uncles, aunts, cousins, nieces and nephews would have to be notified before my will is probated, in case they want to challenge the provisions in my will. Why do I have a will to begin with if extended family members can challenge what I leave to whom? Is this based on a law? Is this based on a dollar amount of the estate? Can it be possible that one of my extended relatives can get a part of my estate even though I did not list him or her? This hardly seems fair to me.*

*L.P., via e-mail*

"Your fears are groundless, but you're not the only reader who was startled to learn that the law requires notification of some family members before a will is probated.

Probate is the process in which a court affirms that your will is valid. The only family members who must be notified before this happens are those who have legal standing to challenge its validity. This group is strictly limited to those who would have inherited under the state's intestacy law, if there had been no will.

For example: The law says if you die without a will, your assets are divided between your surviving spouse and your kids. That means if you do have a will, notification of probate goes only to your spouse and kids. Nobody else must be notified, because nobody else can inherit - not even if the court invalidates your will because it's unwitnessed and unsigned.

You're unmarried and childless. If you had no will, the law would give all your assets to your parents; if they've predeceased you, everything would go to your siblings. Assuming your parents aren't alive, your siblings are the only ones who'll be notified when your will is probated, says Jeff Zankel, a Melville estate lawyer. If one of your siblings has predeceased you, his or her children will be notified, because they'd be entitled to their parents' share. But your uncles, aunts, cousins, and other nieces and nephews are out of the picture.

Clear so far? Then let's talk about how hard it is to get a will overturned, even for people who have the right to try.

Imagine Dad's will leaves everything to his girlfriend. His kids can challenge it; if it didn't exist, they'd inherit his estate. But they can't contest it merely on the grounds that it's unfair. Legally speaking, that's irrelevant. Dad was entitled to dispose of his money as he saw fit.

To overturn his will, they must prove one of three things: improper execution, lack of capacity or undue influence. This means they must convince a court that the will is technically flawed - for example, that Dad didn't sign it, or that it wasn't properly witnessed, or that he didn't have the capacity to understand what he was doing or that he signed it under duress.

It's extremely hard to prove any of this.

It doesn't take much mental capacity to sign a will - a lot less, in fact, than it takes to sign a contract. All you have to understand is how much you have to leave and who your family and friends are.

The fact that a 90-year-old man preferred his greedy 22-year-old girlfriend to his loving children may show that he was a bad parent and a terrible judge of character, but it's not evidence of mental incompetence. If he knew what he was doing and wanted to do it, his will is valid."

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*Send questions to Family Finance, Business Desk, Newsday, 235 Pinelawn Rd., Melville, NY 11747-4250, or e-mail to Bfamfin@aol.com. Include your age, income and a list of major assets. Letters and e-mails can't be answered personally.*