

Will in a Box

The Dangers of Estate-planning Software Programs

By TODD C. RATNER, Esq.

The recent sophistication of software has contributed to an increase in home-grown estate planning. These mass marketers of legal services misinform people into thinking that they are saving money and that they are receiving sound legal advice. This is simply not true.

As an estate-planning attorney, I felt an obligation to learn more about these sellers of legal advice. As such, I visited the Web sites and researched the software applications of several well-known estate-planning services.

One of them called itself a 'Legal Documentation Service.' The service purported to "save time and money on common legal matters ... and create reliable legal documents from your home or office." Another purported to "help protect your family and your assets, and save on legal fees."

The process of preparing the documents among these companies was similar. Each required you to answer a series of questions, either online or via their software package, and your documents are prepared either instantaneously or within 48 hours. However, one software-based company suggests that you read an accompanying book, which is hundreds of pages in length. Although, you may not need to read the entire book, I do not understand how the public can decipher which parts to skip over and which to read thoroughly with only a basic understanding of estate planning. This seems like a hefty burden on the consumer and not quite the time-saver that the company publicizes.

Intrigued, I moved forward. I started answering the will ques-



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tionnaires of several services, and due to my own thorough understanding of the intricacies of estate planning, I was perplexed that my options were limited on these questionnaires. Among other issues, I specifically wanted to better understand my options regarding the inheritance distribution alternatives for my children:

- Could the distribution ages be staggered so that the children would not receive a windfall at age 18?

- Could I separate principal and interest?

- Could my children approach the trustee for health or educational needs prior to the set distribution age?

So, I called the telephone number provided on one of the Web sites, and I spoke to a young woman who was very pleasant. But when I asked if she could provide me with examples of how I could distribute my assets to my children in the event that I survive my spouse, she simply stated, "you can distribute any way you wish."

Although this may be somewhat accurate, it did not truly answer my inquiry. I then asked if she was a practicing attorney, and she answered that she was not.

This was just the first of many

questions that I had about the questionnaire. Another question regarded whether or not I was required to state my desire for organ donation and cremation in my will instead of my health care proxy. The representative answered that I am only able to insert this information into the will. Many attorneys suggest that this language be included in one's health care proxy because that document is usually reviewed prior to the will.

As such, the will may be read by your loved ones well after your body has been buried, and therefore, your intent will not be adhered to. But several of these companies do not allow this flexibility.

Additionally, with many services, nothing prevented me from including a disabled child, who would be receiving governmental assistance, as a beneficiary under the will. As experienced estate planners know, the receipt of assets by a disabled individual on governmental assistance most often disqualifies them from governmental benefits.

One company uses the tag line: "We Put the Law on Your Side," a claim that a law firm cannot make under the marketing rules that govern the legal profession. Nevertheless, the

company claims to be a leading legal Web site. Huh? The people that work on the documents are not attorneys, and they cannot, by law, give legal advice.

To further illustrate this point, one Texas court went so far as to declare that a software-based mass marketer of legal documents constituted the unauthorized practice of law because its process was too interactive and sophisticated.

Most companies do a review, making sure that all answers are completed in the questionnaire and that all spelling is correct. These minor tasks are akin to a very narrow role as a proofreader of the consumer's data entries. This has to be limited by law, since no attorney is involved in this process.

These companies hope that you will never read their disclaimer or terms-of-use disclosure. One such disclaimer provides that they are not providing any legal advice, that their documents may not work in your situation, that their documents may not be valid in your state, and that you agree to hold them harmless for any consequences resulting from your choice to use their services rather than seeking the advice of an attorney. Another disclaimer provides that "this product is not a substitute for ... an attorney" and "we've done our best ... but that's not the same as personalized legal advice" and "if you want help understanding how the law applies to your particular circumstances, or deciding which estate-planning documents are best for you and your family, you should consider seeing a qualified attorney."

How can this provide the end-user with the confidence that

their estate-planning documents are both legally binding and appropriate to their particular situation?

Probate law is strict and unforgiving. Good estate-planning attorneys work diligently to keep abreast of changes in the law through memberships in such organizations as the National Academy of Elder Law Attorneys Inc. and the Estate Planning Council of Hampden County, and through extensive, continuous reading and legal research. Creating your own legal documents provides a false sense of security, and the inaccuracies are usually discovered only when it is too late to do anything about them.

Most people need the perspective that an impartial, experienced estate-planning attorney provides. You are playing with fire if you engage the services of these companies for the following

reasons:

- These programs largely disregard specific laws that can dramatically affect your estate;
- Your unique issues and circumstances can be flushed out and addressed only through consultation with an attorney; and
- You are not securing the experience and the knowledge of an attorney trained to handle the specific circumstances of your estate.

Another inaccuracy that I found regarded the fee structure. One company claims that, “with [the company’s] lawyer-free service you can save up to 85% off the rates an attorney would charge for the same procedure.” Upon a review of what the company claimed to be an estimated fee that an attorney would charge for the preparation of the will, I was flabbergasted. I can only speak for my firm, but our fee is approximately 4.5 times less than the

estimated fee quoted on the Web site.

Moreover, one company suggests that its service is equivalent to the services of an attorney, which is undoubtedly inaccurate as outlined above. In fact, a Colorado attorney boasts that he loves these online and software companies because he has been retained by individuals to correct mistakes included in documents prepared through one of these companies, and he has earned more than what he would have if he had performed the work in the first place.

In conclusion, the subjects that typically matter the most to you — your health, your family, and your finances — warrant the attention of an experienced, trained professional who will put their bar license and malpractice insurance on the line to provide you with the advice, counsel, opinions, and recommendations

that are essential to drafting a proper estate plan.

People generally create estate plans for the peace of mind that they provide. The question is whether or not a software program and/or an unlicensed, uninsured, and largely unregulated document preparer can provide you with the peace of mind that your estate plan was done appropriately and addresses your specific needs.❖

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