

HEIRS' PROPERTY

LAWYER SKIT - PREVENTION

Role play a situation between a lawyer and a person or couple coming to visit a lawyer for the first time to begin working on a will. You may use some of the questions under "Questions a Lawyer May Ask" and allow the other person to make up answers. Or you may use the suggested script. Feel free to edit any of this content to fit your audience and the amount of time you have allotted for this activity.

Meeting with a Lawyer – Drafting a Will

Questions a Lawyer May Ask

- I require a retainer to begin. I will need you to pay me \$250.00 before I can begin work.
- I need you to sign an engagement letter. It explains the legal services I am rendering to you and the terms, the use of the retainer, and the terms and conditions of my employment. Please let me know if you have any questions. If not, please sign the letter and return it to me.
- What is your full (legal) name and date of birth, address, and phone?
- Are you married and if so, what is the name of your spouse?
- Do you have children and if so, what are their names and ages?
- Who do you want to be the executor of your estate, that is the person who will handle carrying out the wishes for your estate you set out in your will?
- Do you have real property?
- To whom do you want to leave your real property (your home and any other land)?
- To whom do you want to leave your personal property (furniture, cars, jewelry, or other personal property)?
- Do you have any children who are under 21, and if so, who do you want to designate as their guardian (if their other parent is not living at the time of your death)?

- Did you want to create a trust for any minor children or other person in your will and if so, let me know what you want to accomplish with the trust?
- Do you want to also execute a power of attorney for healthcare and a general power of attorney when you execute your wills? If so, I will have some more questions concerning those documents.

Suggested Script

Participants:

- Lawyer (whose practice includes wills and estates)
- Client (divorced woman who has not remarried)

Setting:

First meeting of the lawyer and client concerning drafting a will.

Skit:

This is a suggested skit. It should be modified as desired, or participants could ad lib as desired. Information that is needed is represented by brackets [with an explanation within the brackets].

[Lawyer] Good [morning/afternoon]. My name is [insert name]. I practice law in [insert city] and my practice include wills and estate work. Thank you for meeting with me today.

[Client] It is nice to meet you. My name is [insert name]. I received your letter about meeting today and explaining the terms of my engaging you as my lawyer. I also brought documents as you requested and ones that I thought would help you in drafting a will for me.

[Lawyer] Good. Before we proceed, I need to make certain we are clear on who I represent (only you or others) and the terms of my engagement including the retainer payment. Please let me know if you have any questions concerning the engagement letter so that I can answer those and revise it to reflect our agreement. I need you to sign it before I begin working for you.

[Client] You will only represent me. I am divorced and have not remarried. I do have a question as to why you want me to pay you something now when you have not done any work for me.

[Lawyer] My practice is to charge \$500 for a simple will. I am paid \$250 up front and \$250 upon completion and execution of the will. I found this keeps clients committed to complete their will and prevents me from not having any payment for the work I have done if a client changes their mind and does not complete their will. If that is satisfactory, please sign and return the letter to me along with your check for \$250 made payable to my firm's trust account as described in the engagement letter.

Please let me know the names and ages of your children and where they presently live, as well as the names and city of residence of anyone else to whom you would make a bequest (gift) under your will?

[Client] I have three children. They are:

- [Name of child] who is [list age* should be 21 and above] and lives in [list city] whose father was my first husband who died.
- [Name of child] who is [list age* should be 21 and above] and lives in [list city] whose father was my first husband who died.
- [Name of child] who is [list age* should be 21 and above] and lives in [list city], whose father is my second husband from whom I am divorced.

I do not plan to give anything to anyone other than my three children.

[Lawyer] Please give me the name and date of death and date of divorce of your husbands.

[Client] My first husband was [name], and he died on [date]. His estate was probated in [name] County, and I inherited everything from him. My second husband was [name], and we divorced on [date] and that divorce proceeding was in [name] County. I brought a copy of the order closing the estate of my first husband and the final decree of divorce from my second husband as you requested in your letter to me.

[Lawyer] Thank you. Do you own any real property now and if so, please describe it and where it is located?

[Client] Yes. I own two properties. One is my home located at [insert street address and city]. The other property is 160 acres of family [farm/timber] property in [insert name] County that I inherited. I want to leave both to my children equally. They will sell the home since none of them need or want it. They will keep the family [farm/timber] property in the family. I brought a copy of the deeds to both properties as you requested in your letter to me.

[Lawyer] Thank you. Tell me about the ownership and any debt on the property. Do you own both properties in your name? Do you have any mortgage or deed of trust on the property?

[Client] I own both properties solely in my name. I have a mortgage on my home with [name] bank. I do not have any debt on the family [farm/timber] property. I brought a copy of the mortgage as you requested in your letter to me.

[Lawyer] Thank you. What you are describing is typical for a simple will that a lawyer prepares where there is no living spouse. Let's talk about your home first. I suggest you will direct your home to be sold by your executor and the mortgage or deed of trust paid from the proceeds and the net proceeds be

paid equally to your children. This keeps one child from holding up the sale by refusing to sell it if you leave it jointly to all three. How does that sound?

[Client] I had not thought of them having a dispute over the sale. One of my children is a little hard to deal with at times and enjoys fighting with the other siblings, so I agree with that suggestion.

[Lawyer] Let's talk about your family 160 acre tract. Many people like you would choose to leave this property jointly to their children. Although when your will is probated, the title will be clear on the property, you will have created an heirs' property issue in that the three of them jointly own the property as a whole. This means none of them own any particular part and they all have to agree on how to use the property. There could be problems arising from these heirs' property issues. Solutions include: (1) splitting the property into 3 distinct pieces of equal value; (2) putting the property in a limited liability company (LLC) where they each have a 1/3rd interest but where decisions as to management and use are made by a majority vote of each of them as a member/manager; or, (3) creating a trust that has similar provisions for a trustee to manage the property for the benefit of all three children. There are other options, but first tell me whether any of these options appeal to you or if you have another approach you would like to discuss. Some of these options will require you to pay me additional fees. I will estimate those for you when you decide how to proceed.

[End of skit.]