

SELF-PROVING WILLS & SPENCER TRACY

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MY FATHER MAY HAVE MADE A MISTAKE. We may have been the first family in our neighborhood to own a television. Although unintended, he turned a day dreaming, disorganized son into an addict. I fell in love with the Million Dollar Movie. WOR-TV Channel 9 played the same movie every day for a week... Monday through Friday. This meant that I could watch a movie when I could sneak into the TV room at 5 p.m., mindful of my sport schedules. The price I paid was that it was one of the reasons I rarely did homework. Most of them were old movies and many, like *Inherit the Wind*¹, helped my education more deeply than daydreaming in a class.



I was profoundly impacted by actors like Spencer Tracy, Errol Flynn, and James Cagney. I also fell in love with Olivia de Havilland in *Strawberry Blonde*, who, coincidentally, looked and behaved like my wife when I met her for the first time.



As I matured into the world of trust administration, the characters were not far away. When legally challenged, I might say "What would Spencer Tracy do?"

After reading about a will that was disallowed by a probate court in another state because the "soon-to-be decedent" (the testator) was in an L-shaped hospital room where all the witnesses could see the testator sign, but one witness could not see the other witness

sign, I was stunned. This occurred many years ago but Vermont's law in this regard, then and now, is as follows: "Each witness signed at the request of the testator, in the testator's presence, and in the presence of the other witnesses".

As a youth, one of my favorite Million Dollar Movies was *Men of Boys Town*. It featured Spencer Tracy as Father Flanagan and Mickey Rooney as an orphan. The movie was about the founding of Boys Town and featured the classic line, "He ain't heavy, he's my brother", that was the motto of Boys Town. I was so impressed by this movie, that, had I possessed valuable assets, I would have voluntarily liquidated my estate and sent the proceeds to Father Flanagan.



One day in my early time as a trust officer at the Vermont National Bank, I walked into the lobby and was asked to witness a will just signed by a customer of the Bank. Two bankers had just witnessed her signature and signed the document. Vermont law in those days required three witnesses, and I had not seen either the testator or the witnesses sign. What to do?



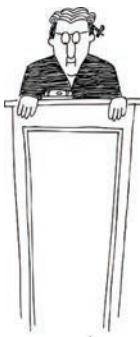
The customer was very upset when I suggested we might have a problem. Her will left all of her estate to a charity located in...of all places...Nebraska. It was Boys Town! I asked her if she had a family. "No", she said. I thought, well, who is going to object to

her will? Only relatives would stand to gain. Will anyone remember the details many years later when the will is admitted to probate upon her death? No one, perhaps. Certainly not me. I have a hard time finding the right parking lot at the end of the day.

A Vermont case allowed the testator to acknowledge his or her signature in front of the witnesses, so I had her acknowledge her signature. Now, what to do about the witnesses? No case in Vermont covered this problem. They could have signed again, but double signatures might have raised other issues such as the witnesses' sobriety. So I asked each witness to acknowledge their signature, signed the will as a witness and returned the executed will to a happy customer.



She died six months later. We learned of her death when her *husband* brought in the will. Although she shared the same house, she had not talked to him in twenty years and, evidently, refused to acknowledge his existence.



Under Vermont law, it is necessary for at least one witness to testify at the probate hearing to allow the will. The Judge looked very puzzled when I testified about the unusual circumstances concerning the signing of this will. Fortunately for him, he did not have to render an opinion as to the validity of the will. In Vermont, a spouse has the right to take all or part of the probate estate when adequate provisions are not made for them in the will. Due to the size of the estate, her husband was able to elect against the will and take the entire estate.

So it really didn't matter whether the will was valid. But the point of this story is that we should leave the drafting and execution of wills to the lawyer? Yes! But.....

Witnessing a will can be challenging. What happens if all the witnesses simply retired and went to unknown places? Fortunately, Vermont in 2018 passed a law that allows for "self-proved wills". If the will is notarized and no one objects to the filing of the will, the Court will approve without requiring a witness. So the point of this story is to make sure your will is notarized so you don't have a witness like me testify in front of the Judge. Yes! But.....

What about Boys Town? Had I known that the spouse would take her estate instead of Boys Town, and its orphans and Father Flanagan, I would have suggested a living trust. The last time I checked, Vermont is one of only 16 states that allow a spouse to disinherit a spouse using a living trust. Vermont statutory law is clear, but litigation may change the law. But it has not happened and, in some states, the Court has not sided with the spouse left out.



By the way, Vermont does not require a witness for a trust. That said, always have the trust notarized.

Footnote: ¹*Inherit the Wind* tells the story of the famous 1925 Scopes "Monkey Trial". John T. Scopes was a schoolteacher in Dayton, Tennessee who was arrested for teaching Charles Darwin to elementary school students.



"My Goodness! Your dear old uncle appears to have left everything to me."