



ELDER LAW AND ESTATE PLANNING

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Personal representative must take special steps after discovering late friend's will not self-proving

Question: I am the personal representative for a very dear friend who died after a long illness. "Dina" never married and had no children. When she got sick she gave me her will for safekeeping. Out of respect for her, I never looked at it. I just put it away and promised her I'd take care of everything when the time came. When she passed I was advised to find the original two witnesses on the will. The will was signed in 2014. I've discovered one of the two original witnesses is deceased. The other resides in Costa Rica. What am I supposed to do now?

Answer: Sorry about the loss of your friend. Sorry, too, for the frustration you are experiencing as you try to perform your duties and uphold your promise to her.

It appears that Dina's will is not self-proving. A self-proving will is one that is signed by the testator (the will-maker) and two witnesses in the presence of one another and in the presence of a notary, with all the parties signing an oath attesting to that. When a will is self-proving, it is not necessary to locate the original witnesses – a task that, as you now know firsthand, can be difficult and sometimes impossible to accomplish. Dina's will was probably a do-it-

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yourself document, or she might have used a non-lawyer to prepare it.

At this point, you need a probate attorney to guide you. If the witness in Costa Rica can be located, a method exists whereby he/she could sign an oath there. If the witness cannot be located, the court *may* accept the oath of the nominated personal representative or the oath of a person not interested in the estate, stating they believe the signature to be the decedent's. Otherwise, the estate will have to be probated under Florida intestacy laws.

Good luck.

Joseph Karp and Jonathan Karp are Florida Elder Law and Estate Planning Attorneys. The Karp Law Firm is located in Palm Beach and St. Lucie counties. It assists clients with wills, trusts, Medicaid and VA benefits planning, special needs planning, asset preservation, probate/trust administration, estate litigation, and probate and elder law mediation.