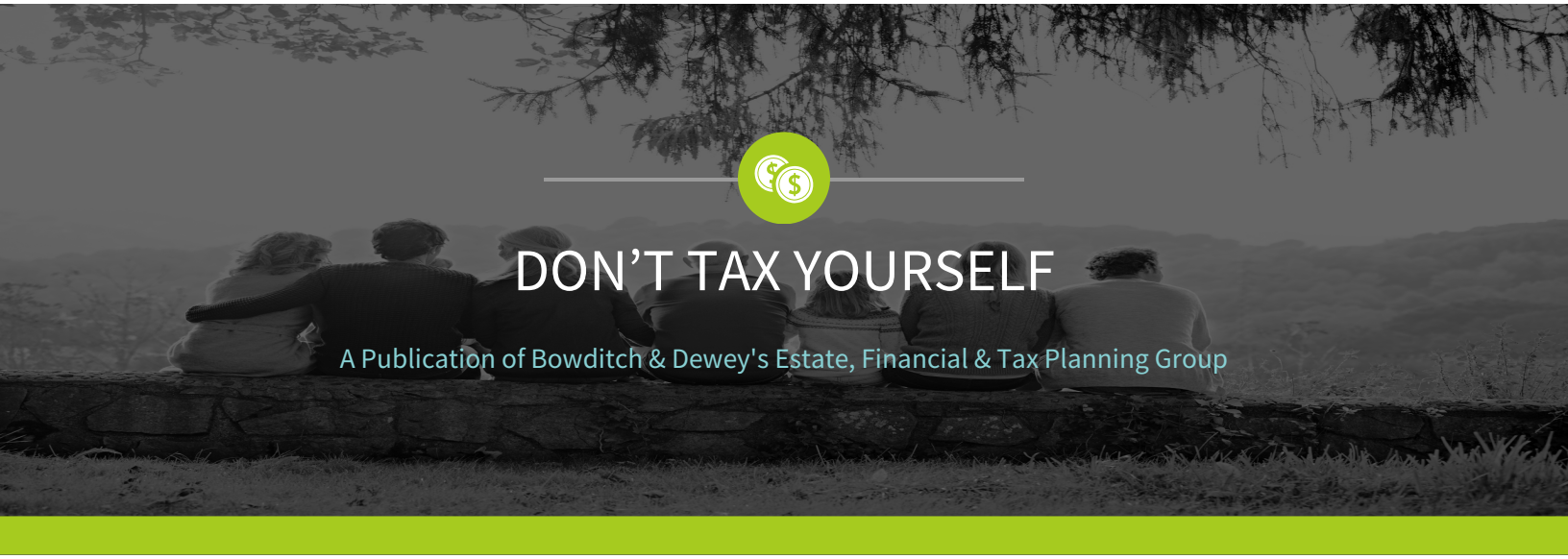

DON'T TAX YOURSELF

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Is a Scribbled Will Valid in Massachusetts?

BY KATHERINE R. DORVAL • APRIL 29, 2024

A handwritten or scribbled will signed by the testator is technically known as a holographic will, and many people try to prepare their own wills in an attempt to be frugal. However, are holographic wills valid in Massachusetts?

The Massachusetts Uniform Probate Code ("MUPC") was adopted in 2009, using the model Uniform Probate Code ("UPC") as a guide. As a result, a new provision entitled "Execution of Wills" (Massachusetts General Laws Chapter 190B, Section 2-502) was enacted, which governs the validity of wills. It requires that a valid will must be

> "1) in writing,
>
> 2) signed by the testator or in the testator's name by some other individual in the testator's conscious presence and by the testator's direction; and
>
> 3) signed by at least 2 individuals, each of whom witnessed either the signing of the will . . . or the testator's acknowledgment of that signature or acknowledgement of the will."

The statute, however, also includes a provision allowing extrinsic evidence to be presented that the writing constitutes the testator's will. This additional language creates an ambiguity and has recently come under the scrutiny of the Massachusetts Appeals Court in Plymouth County.

In that case, a will was submitted to probate that the testator had not signed (it was signed by her conservator instead), which required the court to examine the relevant statutory requirements closely. The Court found that the UPC statute included language that explicitly authorizes holographic wills, but that language was intentionally omitted from the MUPC. Although they struggled to explain the "extrinsic evidence" language, the Court stated that it did not supplant the signature and witness requirements of the statute, which are to be strictly construed in Massachusetts in accordance with the legislative intent.

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Holographic wills are not valid in Massachusetts because they don't comply with the strictly construed Massachusetts witness requirement. Although they seem like an appealing way to save money, holographic wills always end up costing more to probate and often result in challenges and litigation that invariably cost exponentially more in attorney's fees than it would have cost to hire an attorney to prepare the will in the first place.

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