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### **Acting as a Witness to a Resident's Will**

In the past, a resident at your senior housing community may have asked you to witness the signing of his or her will. You may have agreed, thinking there could be nothing wrong in performing such a harmless act to help a resident. If you agreed, did you act appropriately? Or, in some circumstances, does Colorado law prohibit a member of the staff or administration of a senior housing community from acting as a witness to the signing of a resident's will?

Before considering this issue, it is important to discuss some of the commonly used terms involved with wills. A person with a legally valid will is called a "testator." A "beneficiary" is a person who is designated as the recipient of funds or other property in a will, and a "witness" is an individual who attests to the authenticity of the signature of the testator on a will.

The law in Colorado is fairly straight-forward regarding witnessing requirements for wills. In order for a will to be legally valid and enforceable in Colorado, a will must generally be signed by a testator and at least two witnesses (except for holographic wills, which are handwritten wills, acceptable in only a few states and which can raise a different set of issues). The witnesses must sign the will within a reasonable period of time after witnessing either the testator's signing of the will, the testator's acknowledgement of the signature, or the testator's acknowledgement of the will. In Colorado, any individual generally competent to be a witness may act as a witness to a will.

Colorado law does not specifically prohibit a beneficiary of a will from acting as a witness to the signing of that will. Nevertheless, it may not be inadvisable for a beneficiary to witness the signing of a will under which the witness is a named beneficiary in order to avoid the potential for a conflict of interest. Similarly, a person who is an agent for an organization that will be a beneficiary under the will should avoid becoming a witness. The use of an interested person as a witness to a will increases the possibility of charges of undue influence, fraud or the like.



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In a senior housing community setting, any facility staff member who is a named beneficiary in a resident’s will, or any person in a position of influence over a resident/testator should be advised not to witness the signing of the resident/testator’s will. People that could be considered to be in a position of influence over a resident could include staff members with significant direct contact with the resident, certain managers at the facility, members of the facility’s board of directors and the facility’s administrative personnel. To minimize the possibility of having to defend a claim of undue influence or fraud, facilities should develop a policy to prohibit anyone who may be in a position to exert influence on a resident/testator from witnessing his or her will, especially if that person is a named beneficiary in the will.

It is also advisable for senior housing communities to memorialize their position on whether, and under what conditions, staff members can witness the signing of a will. Facilities should adopt a policy and process that sets forth the facility’s position for staff members and administrative personnel. The policy and process should clearly define which individuals are prohibited from witnessing wills. The policy should also provide that any individual requested by a resident to witness a will must report the request to his or her manager, or other appropriate individual(s). Any facility determination regarding a staff member’s witnessing of a will should be documented by the facility, along with a description of the basis for any such determination.



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