



OKLAHOMA CITY UNIVERSITY



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**ARTICLE:** "Formal Execution and Informal Revocation: Manifestations of Probate's Family Protection Policy," 34 *Oklahoma City University Law Review* 411 (2009)

**A**uthor Mark Glover provides compact, but seemingly complete, descriptions of general state law will creation and revocation requirements, how those requirements have evolved from their ancient origins, how they are administered by the courts and their practical consequences. Supported by those legal, historic and practical observations, Glover concludes that courts require substantially greater formality and evidence assuring that testator intent is followed to make a will than they require to rule that the testator has revoked an existing will. Glover then argues that these formality and intent assurance disparities result from an underlying policy bias. More specifically, Glover contends that will statutes and judicial precedent favor dispositions of decedents' property to traditional family members, rather than to other potential legatees or devisees.

Courts may exhibit that policy bias when they hold that a will is invalid or find that a testator had revoked a previously valid will. In both of those situations, the outcome is often that the decedent's property passes under state intestacy laws, which, in all states, favor spouses, descendants, ascendants and collateral relatives. Conversely, individuals who aren't members of the decedent's traditional family who might have been designated in an unrecognized or revoked will won't take a share. Further, the high hurdle for will recognition and low threshold for will revocation combine to favor traditional family members sharing in the proportions generally thought to be fair. For example, a child intentionally omitted from his parent's will ends up taking the same share as his siblings if a court rules that the will is invalid or that the testator had revoked a valid will and the laws of intestacy govern the disposition.

Of course, recognizing policy biases imbedded in the law can often be important for practitioners dealing with the law on their clients' behalf. The practical estate planners' steps are well known; that is, they scrupulously observe will-making formalities and advise clients on

how to revoke their wills. That way, they limit the risk that courts will erroneously determine that the client revoked his will. Therefore, Glover's article is unlikely to have much import for practical estate planners.

However, Glover's article may be informative to state legislators or others who wish to consider policy changes. Most importantly, Glover persuasively argues that current law regarding will revocations may unduly risk subordinating individuals' actual and possibly idiosyncratic dispositive wishes to established public preferences for equal dispositions among traditional family members. More specifically, the ease with which wills may be revoked may provide incentives for heirs at law who have access to a decedent's will to take actions that make it appear that the testator had revoked his will (for example, the heir could simply hide the will).



## SPOT LIGHT

**From Sea to Shining Sea**—Andreas Feininger's 1953 gelatin silver print, printed in 1998, "Texaco, Route 66, Arizona," about 17 inches by 13 inches, sold for \$3,660 at Bonhams' "Photographs" sale in New York, San Francisco and Los Angeles on May 18, 2010.