

Contesting A Last Will And Testament

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A will is a precious document that determines the distribution of a person's assets to individuals on his demise - according to his choice and in a legally approved fashion. The beneficiaries of a will are usually those who fall in the law of descent from spouse, to children and then their descendants. But a person is also free to leave his money to anybody he likes – he can leave his property to charity, a sizeable sum to his faithful butler, and not a penny to the family. But his legal heirs may not like this.

Thus there is scope for legal wrangling and contesting of the wills of certain people. Beneficiaries may not like the size of their share. Others may be left out of the list of beneficiaries. Whatever the reason, many wills are subject to contesting, especially when they involve large estates and millions of dollars are at stake.

A will contest is a formal objection raised against the validity of a will, based on the contention that it does not reflect the actual intent of the testator. Wills are contested on the premise that the testator lacked capacity, was insane or under delusions, or was subject to undue influence.

Typically two kinds of persons stand to contest a will: those who are named in the face of the will and those who will inherit from the testator if the will is invalid.

In defining capacity for a will, all adults above the age of 18 are fit to write wills, and minors are termed incapable. Litigation usually revolves around incapacity of testator due to senility, dementia and insanity or any such defects which render him unable to form a proper will. But the state recognizes that capacity to form a will is present if three conditions exist-the testator knows the value and extent of his property, which his family members are and how they treated him in his lifetime.

This legal test is relevant since dissatisfied heirs who expected a larger share than what they received bring most of these contests of will. The burden of proof thus rests on the complainant to establish incapacity of the testator. They must prove that the testator had lost his memory or was under delusions while writing his will.

Lawyers of testators whose capacity is doubtful maybe called to record interviews with his client on video. They may test the capacity of the testator to remember his family members, about his property and about the contents of his will.

Undue influence is the second clause, which is used as a bone of contention. In many states a legal premise of 'undue influence' arises when a beneficiary of a will stand in a confidential relationship with the testator.

Undue influence in contract law is of two types-presumed undue influence and actual undue influence. Presumed undue influence exists among the following groups-parent/child, guardian/ward, priest/parish member, solicitor/client and doctor/patient.

In case a testator has left his property to the attorney who drew up his will, the onus is on the attorney to disprove undue influence. An innocent party may also set aside a contract due to actual undue influence.

Besides these conditions, a will maybe contested for technical details. Common mistake is to name a beneficiary as a witness. Also signatures may not be in order. Property value may not be correctly estimated. Names of beneficiaries maybe wrongly indicated, dates maybe wrongly marked, executor may be unwilling, amendments and codicils may not be properly framed or a new will completely revoking an earlier will be contested.

Last Will And Testament provides detailed information about last will and testament, contesting a last will and testament, free last will and testament packages, how to write a last will and testament and more. Last Will And Testament is the sister site of Probate Court.