

Preventing a Will Contest



Emotions can run high at the death of a family member. If a family member is unhappy with the amount they received (or didn't receive) under a will, he or she may contest the will. Will contests can drag out for years, keeping all the heirs from getting what they are entitled to. It may be impossible to prevent relatives from fighting over your will entirely, but there are steps you can take to try to minimize squabbles and ensure your intentions are carried out.

Your will can be contested if a family member believes you did not have the requisite mental capacity to execute the will, someone exerted undue influence over you, someone committed fraud, or the will was not executed properly.

The following are some steps that may make a will contest less likely to succeed:

- **Make sure your will is properly executed.** The best way to do this is to have an experienced elder law or estate planning attorney assist you in drafting and executing the will. Wills need to be signed and witnessed, usually by two independent witnesses.
- **Explain your decision.** If family members understand the reasoning behind the decisions in your will, they may be less likely to contest the will. It is a good idea to talk to family members at the time you draft the will and explain why someone is getting left out of the will or getting a reduced share. If you don't discuss it in person, state the reason in the will. You may also want to include a letter with the will.
- **Use a no-contest clause.** One of the most effective ways of preventing a challenge to your will is to include a no-contest clause (also called an "in terrorem clause") in the will. This will only work if you are willing to leave something of value to the potentially disgruntled family member. A no-contest clause provides that if an heir challenges the will and loses, then he or she will get nothing. You must leave the heir enough so that a challenge is not worth the risk of losing the inheritance. Some states, however, either do not honor no-contest clauses or have limitations upon them.
- **Prove competency.** One common way of challenging a will is to argue that the deceased family member was not mentally competent at the time he or she signed the will. You can try to avoid this by making sure the

attorney drafting the will tests you for competency. This could involve seeing a doctor or answering a series of questions.

- **Video record the will signing.** A video recording of the will signing allows your family members and the court to see that you are freely signing the will and makes it more difficult to argue that you did not have the requisite mental capacity to agree to the will.
- **Remove the appearance of undue influence.** Another common method of challenging a will is to argue that someone exerted undue influence over the deceased family member. For example, if you are planning on leaving everything to your daughter who is also your primary caregiver, your other children may argue that your daughter took advantage of her position to influence you. To avoid the appearance of undue influence, do not involve any family members who are inheriting under your will in drafting your will. Family members should not be present when you discuss the will with your attorney or when you sign it. To be totally safe, family members shouldn't even drive you to the attorney.

Bear in mind that some of these strategies may not be advisable in certain states. Talk to your attorney about the best strategy for you.

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