Why Would A Person Challenge A Will?

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Standing to Challenge a Will

A person has “standing” to challenge a will if the person is named as a beneficiary in the Will or, although not named as a beneficiary, would inherit if the Will was held to be invalid. In other words, to have standing, you must be able to demonstrate that you were named as a beneficiary in the Will (or a prior Will) or that you would have inherited property if the decedent died without a Will. Other reasons exist for standing, which an estate attorney can explain.

A person may get a copy of a Will, which is a public document, in the Surrogate’s office in the county where the decedent permanently resided at the time of death.

Procedure to Challenge a Will

A person seeking to challenge a Will in New Jersey must act timely in one of two ways. Either way will require the assistance of an experienced estate attorney. First, the challenger may file a protest (called a caveat) against the Will at any time before the Will is offered for probate. The caveat is filed with the surrogate in the county where the decedent resided. Under New Jersey law, the executor may not offer the Will for probate until the 11th day after the death of the testator (the deceased person whose Will is offered for probate). This gives the challenger at least 10 days to file the protest before the executor may offer the Will for probate. A hearing will then be held to determine the validity of the Will. If the challenger is unable to file the caveat before the Will is probated, the second option gives the challenger four months from the date the Will was admitted to probate to file a complaint in court challenging the Will. If the challenger resides outside New Jersey, the challenger will have six months to file the complaint. If the challenger suspects that fraud was involved in probating the Will, the challenger may file the complaint no later than 30 days beyond the prescribed four and six month time limits.

Grounds for Challenging a Will

There are several grounds that may be available for challenging a Will, which include, but are not limited to, failure to comply with the statutory formalities for executing a Will, lack of testamentary capacity, and undue influence.

1. Failure to Comply with Statutory Formalities for Executing a Will

a. Statutory Formalities For Executing a Will.

To be a valid Will and admissible to probate, the Will must be:
(1) in writing;
(2) signed by the testator or in the testator's name by some other person in his conscious presence and at his direction; and
(3) signed by at least two persons, each of whom signed within a reasonable time after each witnessed either the signing of the Will, or the testator's acknowledgment of his or her signature or acknowledgement of the Will.

In addition to satisfying the above formalities, the Will must have testamentary intent, that is, the document must indicate that it is the testator's last will and testament. A Will that complies with the formalities above is presumed to have testamentary intent even if the document does not expressly say so.

b. Writing Intended as a Will

New Jersey law provides that a Will that does not comply with the above statutory formalities may still be valid as a writing intended as a Will if the testator's signature and material portions of the Will are in the testator's own handwriting. The person offering the writing intended as a Will must prove testamentary intent by clear and convincing evidence if the writing is challenged.

2. Lack of Testamentary Capacity

Assuming the formalities discussed above are satisfied, a Will is valid in New Jersey if the testator, at the time of signing the Will, is at least 18 years of age and of sound mind. The presumption is that the testator had testamentary capacity at the time the testator signed the Will. The person challenging the Will for lack of testamentary capacity has the burden of proving by clear and convincing evidence that the testator lacked testamentary capacity when the testator signed the Will. The test of testamentary capacity is whether the testator knows the extent of the property being disposed of, the persons who are inheriting the property, the nature of what he or she is doing, the relationship of these factors to each other, and whether the testator understands that the Will is the device used for distributing the property. Testamentary capacity or the lack thereof may be demonstrated by the testimony or opinions of lay and expert witnesses.

3. Undue Influence

If anyone exerted undue influence over the mind or free will of the testator at the time of the execution of the Will, the Will is void. In such a case, the Will was not the product of the exercise of the testator's own free will but was instead the result of someone forcing the testator, whether by psychological, physical or by some subtle means of coercion or manipulation, to do something that the testator would not have otherwise done regarding the distribution of the testator's assets under the Will. Courts will examine a number of factors to determine the presence of undue influence including but not limited to the age and mental and physical condition of the testator, and the relationship of the testator to the person exercising the undue influence. A presumption of undue influence arises if the person challenging the Will demonstrates that there was a "confidential relationship" between the testator and the proponent of the contested Will and there were "suspicious circumstances" surrounding the testator's execution of the contested Will. The burden of proof then shifts to the proponent of the contested Will who must then disprove that the Will was the result of undue influence.