

How to Contest a Will: The Basics

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We all know that a person can control who will own his or her property after death by signing a will. But when questions arise as to the circumstances surrounding the signing of the will, what can be done to challenge it?

The validity of a will is formally challenged in what is known as a caveat proceeding. A caveat proceeding addresses the issue of whether a will that has been admitted to probate should be declared void.

A caveat proceeding is effectively a type of lawsuit that must be filed with the Clerk of Superior Court. Caveat actions have their own special procedures (different from many other types of lawsuits) found in Chapter 31 of the North Carolina General Statutes. Any "interested person" can bring a caveat action. "Interested persons" include potential heirs to the estate in question (that is, family members who would receive property from the deceased person in the absence of a will) or beneficiaries named in a lost, destroyed, or prior will.

Most often, caveat proceedings begin after a will has been admitted to "probate in common form," or filed with certain paperwork with the Clerk of Superior Court, and a challenger, known as a "caveator," learns of facts or circumstances in which he or she believes would void the will. When the will has been probated in common form, the caveator has three years from the probate application to bring a caveat action. On rare occasions, wills are offered for probate in "solemn form." When a will is offered for probate in solemn form, the Clerk will notify all interested parties and give them an opportunity to appear in court and state if they wish to challenge the will. If any person contests the will, the Clerk will convert the matter to a caveat proceeding. If none of the interested parties served contest the will, the probate in solemn form is binding and none of the parties served can subsequently contest the will.

The most common challenges to a will's validity include (1) lack of testamentary capacity; (2) undue influence; and (3) fraud. To prove that a person who signed the will (known as a "testator") lacked the capacity to execute the will, the caveator must prove that the testator did not know who her heirs would be if she did not have a will, did not understand the nature and extent of her property, did not understand the nature of signing a will; and did not realize the effect signing a will would have upon her estate. Generally speaking, a mere showing of poor physical health or mental decline is not enough to show a lack of testamentary capacity. The fact that the testator showed some signs of dementia prior to or shortly after the execution of the will is also not enough, standing alone, to show a lack of testamentary capacity.

In order to void a will on the basis of undue influence, a caveator must prove that at the time the will was signed, the testator was under coercion or influence which caused her to leave her property in a way she would not have otherwise done. Factors considered by our Courts when determining whether undue influence occurred include: (a) old age and physical and mental weakness; (b) whether the testator lived in the home of the person accused of undue influence and was subject to his constant association and supervision; (c) whether others had little or no opportunity to see the testator; (d) whether the will is different from and revokes a prior will; (e) whether the will was made in favor of someone with whom there is no blood kinship; (f) whether the will disinherited the testator's direct family members; and (g) whether the person accused of undue influence is the one responsible for getting the will signed. No single factor is necessarily required or sufficient to establish undue influence. Instead, all of these factors are subject to consideration in determining if undue influence was present.

Fraud is the least common of the grounds to challenge a will's validity. Claims for fraud usually arise when a third party convinces the testator to sign a will by telling her that the document is something other than a will, such as a release form at the hospital.

Once a caveat proceeding is brought, the case eventually will be set for a jury trial in superior court. After all evidence and testimony are heard, the jury renders a verdict either in favor or against the caveator. If the caveator wins her challenge, then the estate will pass through a prior valid will or, if there was no prior will, through intestacy. If the caveator loses, then the challenge is dismissed and the will originally admitted to probate dictates how the estate will be distributed.

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