

# Can I Challenge a Will or Trust if I Believe the Document was Changed at a Time My Loved One Did Not Have the Capacity and/or the Ability to Resist the Influence of Others to Change the Will or Trust?

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A beneficiary named under a decedent's will or a beneficiary under the laws of intestate succession may have the ability to challenge a subsequent will or codicil (i.e., will amendment) executed by the decedent if the beneficiary's interests have been materially affected by the will or codicil. The beneficiary may file a "caveat" to the will or codicil and allege that it was improperly executed, executed at the time the loved one did not have capacity, or was the product of the undue influence of others. Such claims are generally difficult and require close scrutiny of the facts and circumstances existing at the time the will or codicil was executed by the decedent. The caveat action stays the administration of the decedent's estate until the caveat is resolved. While a caveat action may be filed anytime within three (3) years of the filing of the will or codicil in question, it is generally recommended to pursue a caveat action quickly after the probate of the purported will or codicil to avoid a dissipation of estate assets.

A trust instrument or trust amendment may also be challenged by a beneficiary whose interest was materially affected by the creation of the trust or trust amendment. Common reasons for challenging the creation or amendment of a trust instrument include improper execution, fraud or constructive fraud, the settlor's lack of capacity, or the undue influence of others. Any challenge is generally brought as a civil proceeding in the Superior Court and often consolidated together with any related caveat proceeding.

A decedent may transfer assets using a number of different legal methods, including a will, trust agreement, and beneficiary designation forms. For this reason, it is necessary to carefully review all relevant instruments to generate a holistic view of the decedent's intent and the effect of any additions or deletions from the plan.

## About the Author

**Stephen Brown** focuses his practice on business formation and structuring, wealth transfer planning, and litigation involving fiduciaries, trusts, estates and guardianships. If you have questions regarding whether or not to open a

probate estate, please contact Stephen at 919-861-5508 or [sab@youngmoorelaw.com](mailto:sab@youngmoorelaw.com).

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