

What to Expect When the Will is Unexpected

ARTICLE SERIES | Part 3

The “Who,” “What,” “When,” and “Why” of Will Contests

The Will of a loved one is going through probate, but you can tell something’s not quite right. Your thoughts might begin to spiral as you plan for how to handle this so that this relative’s final wishes are respected, and you have no idea where to start. If that sounds like you, take a deep breath. There is a legal process in place for exactly this situation: will contests.

This article will answer four common questions about will contests to help you understand the process. Will contests can be stressful and their outcomes may vary, but for some it may be the right choice.

1 What is a will contest?

A will contest is a legal challenge to the validity of a Will. After a Will has been submitted to probate, if someone feels the document does not properly reflect the wishes of the testator*, then they might choose to file a will contest in order to prompt further consideration.

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2 Who can file a will contest?

Any “person interested” in the estate may file a will contest. In the formal definition of a will contest, a “person interested” is “one, who, at the time of the commencement of an action to contest a will, has a direct, pecuniary interest in the estate of the putative testator, that would be impaired or defeated if the instrument admitted to probate is a valid will.”** In essence, that means you must have a financial stake in this Will. For example, that might mean you were named as a recipient in a prior Will or are one of the family members who would inherit under Ohio’s “intestacy” laws.***

3 Why would you file a will contest?

Some common scenarios that might prompt a will contest are:

- A.** The will was improperly witnessed: In Ohio, a Will must be in writing, signed by the testator, and also signed—in the testator’s conscious presence—by two disinterested witnesses.

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- B.** The will was executed under undue influence: This would mean that the testator was pressured or manipulated when creating their Will in a way that goes beyond the normal influence of loved ones. Often a lack of testamentary capacity also plays a role.
- C.** The will was executed without testamentary capacity: In Ohio, testamentary capacity is defined as having a mental state that allows one to understand the business in which they are engaged, generally comprehend the content of their estate, remember the names and identities of those who have “natural claims” to that estate, and understand their relationship to their family members. Everyone over 18 is assumed to have testamentary capacity unless proven otherwise.
- D.** The will was executed without knowledge of its contents: You must be able to prove that the testator did not know what was in the document when they signed it.

4 When can you file a will contest?

A will contest must be filed within three months after the fiduciary files the Certificate of Service of Notice of Probate of Will (try saying that five times fast!) with the probate court. Before filing that, the fiduciary will have sent letters to every interested party that they know of to let them know that their loved one’s estate is in probate. However, this three-month clock applies to everyone—even those who, for whatever reason, did not receive letters from the fiduciary.

Of course, this list leaves out the most important question: “Should I file a will contest?” Unfortunately, there is no one correct answer for everyone—this is a very personal decision. If you have been unexpectedly

left out of a Will or you believe that the Will is not a true reflection of your loved one’s wishes, we recommend that you contact an experienced Probate Litigation attorney as soon as possible. Will contests can have high stakes both emotionally and financially, and it is important to go forward armed with lots of information and the help of an expert.

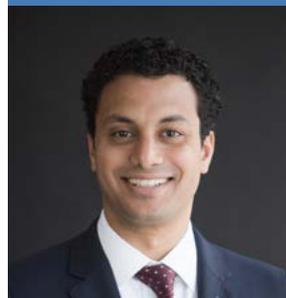
For more information on how your attorney would carry out that will contest, check back soon for our next installment.



Attorney Spotlight

Need an experienced attorney to help you with a will contest?

Mark Mikhael and Ryan Nowlin can guide you through this process.



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*The person who created the Will in question

***Steinberg v. Cent. Trust Co. (1969)*, 18 Ohio St.2d 33, 247 N.E.2d 303, syllabus.

***Laws that apply to those who die without a Will

****Ohio Revised Code Section 2107.76

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