

# What to Expect When the Will is Unexpected

ARTICLE SERIES | Part 4

## How to Approach a Will Contest

If you have been keeping up with this series, then you already know the “who,” “what,” “when,” and “why” of will contests. Now it’s time to dive into the “how” of beginning a will contest.

The process of a will contest will vary depending on what you suspect is wrong with the Will, so here we are going to describe a few common scenarios and how one would approach them. Consider this a quick primer on how to issue-spot.

### 1 The Will was not properly executed.

You might already know that, in Ohio, proper Will execution requires that the Will be in writing, signed by the testator, and signed (in the testator’s conscious presence) by two disinterested witnesses. If you feel that this might not be the case, keep an eye out for these situations:

- The testator directed someone to sign on their behalf. The Will must have the testator’s actual signature.
- Witnesses did not actually observe the testator signing, or vice versa. This must be done in person and

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in the conscious presence of the testator. However, various legislative proposals are circulating to modernize this law.

- The testator had not asked the witness to acknowledge their signature on the Will. For example, the testator may have asked them to simply “sign this paper” but not told them what it was.

### 2 Forgery or Fraud?

If you were writing a movie about a will contest, fraud and forgery are likely the first issues that would come to mind. How do you know if these have occurred in the real world, though? If you suspect fraud, watch out for these things:

- The document, or parts of it, have been faked and passed off as the real thing. According to Cornell Law, a forgery “is committed when a person makes or alters a writing so that it is false with the intent to defraud.”
- The signature page of the Will has been replaced with a fraudulent one.
- The document was somehow altered after its signing or without the testator’s knowledge.

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### The Will Was Revoked, Modified, or Amended: Now What?

People change their minds all the time, even when it comes to their Wills. In order to reflect their true wishes, someone may revoke, modify, or amend a Will. There are a few ways that this can happen:

- The Will was revoked. The testator can do this by intentionally tearing, canceling, or destroying the will or by directing someone else to do so (in which case it must be either requested in writing or destroyed in front of the testator). If there is a torn or destroyed Will, the intent of the testator may be difficult to prove.
- A new Will was written and signed. Creating a new Will automatically revokes any older Wills, whether they have been destroyed or not.
- The Will was modified or amended through a codicil. The codicil must be executed and signed with the same formalities as the Will itself.
- The Will was partially revoked by the end of a marriage. If there is a divorce, annulment, or entry into a separation agreement, then the former spouse of the deceased may automatically lose any right to inherit from their estate.

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### Undue Influence/Lack of Capacity

In Ohio, anyone over 18 is presumed to be of sound mind unless proven otherwise, and it is the person(s) contesting the Will who have to find and present that proof. Note that proving the mental state of someone who is no longer alive is a difficult undertaking, and even a dementia diagnosis might not be enough. Being mentally able to create a Will is known as “testamentary capacity,” and there are four legal criteria for it. The testator must be able to:

- Understand the nature of the business in which they are engaged.
- Generally comprehend the nature and extent of the property which constitutes their estate.

- Hold in their mind the names and identities of those who have natural claim to that estate (such as the testator’s surviving spouse or children).
- Understand their relation to the members of their family.

Considering everything that can be wrong with a Will, a will contest may seem like a lot of work. Certainly, once you begin to think about all of the documents that you would need to prove any of these issues, a will contest appears pretty daunting—and it is a complicated legal undertaking. However, you do not need to tackle this on your own. If you really feel that something is “off” about your loved one’s Will—either something listed in this article or a rarer issue—then you should reach out to a Probate Litigation attorney near you.



## Attorney Spotlight

Looking for an attorney to tackle a potential will contest?

Reach out to experienced attorneys Aanchal Sharma and Veronica Garofoli for more information.



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