

Will Contests: Overview of Legal Grounds for Contesting a Will

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This article examines legal objections that are commonly made during a Will contest. A “Will contest” is a formal objection that is raised by an interested party based on the party’s belief that the Will does not accurately reflect the intent of the testator. In order to challenge a Will, an interested party may argue that the Will did not represent the testator’s actual intent, or the interested party could claim that the Will is not valid under the eyes of the law. To contest a Will, the Will must first be offered for probate. During the Will’s time in probate, the interested party will need to establish the objections in which they are contesting the Will.

Undue influence is perhaps the most common objection in Will contests. Undue influence occurs when a person exerts power over the testator in order to manipulate the terms of a Will to favor the person exerting power. In order to warrant a rejection of the Will based on undue influence, Nebraska requires the interested party to establish that the testator was exposed to undue influence, that there was an opportunity for someone to exercise undue influence, that there was intent to use undue influence for an improper purpose, and the result was clearly a product of undue influence. (*Goff v. Weeks*, 246 Neb. 163, 517 N.W.2d 387 (1994)). Nebraska requires that undue influence be proven by clear and convincing evidence. The interested party would need to show that the testator was not acting within their own freedoms and volitions while creating their Will.

Another common objection to raise during a Will contest is mental incapacity. In order for a Will to be valid, the testator must have been of sound mind when executing their Will.

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Mental capacity of the testator is tested at the time when the Will was executed. Courts look to see if the testator understood the nature of the act of executing a Will; knew the nature and extent of their property; knew the proposed disposition of their property; and “knew the natural objects of their bounty” (meaning those to whom a testator would be most likely to devise his or her estate). (NJ12d Civ. 16.04). In short, the court will need to determine whether the testator had the mental capacity to make provisions for the disposition of their property at the time of execution.

An interested party may also bring a fraud claim to invalidate the Will. If an interested party can prove that a beneficiary knowingly used false statements to bring about a change in the testator’s intent, then a Will can be declared invalid under fraud. In order to prove fraud to a judge, the interested party will need to show that there was a lie, and that a change to the Will—that damaged the interested party—occurred because of that lie. Fraud can be one of the most difficult objections to prove as typically only the “wrongdoing” beneficiary is a witness to their lie.

Aside from possible interference with the Will from beneficiaries, an interested party may also bring a claim based on the execution of the Will. In Nebraska, the state requires that every Will must be signed in writing by the testator with two witnesses present to acknowledge the signature of the Will. If any step of execution is done improperly under state law, then an interested party may contest the Will on execution grounds. An exception to this requirement is a holographic Will, *i.e.*, a Will in the handwriting of the testator that contains a signature, the material provisions, and an indication of the signing date.

This article is meant to provide a general overview of the legal grounds to contest a Will, but there are many nuances to consider when bringing a Will contest. The members of Koley Jessen’s Estate Litigation Practice Area have significant experience in Will contests and are available to answer any of your questions.