



## Will Contests

A Will contest usually happens when heirs are surprised by what a Will says. I have represented both heirs and estates, and in all cases there are some big misunderstandings about the reasons you can challenge a Will; being disappointed is not one of them.

When heirs are surprised by what a Will says, it is usually because they thought they were getting something, and you intended for them to get nothing. LESSON: make sure you are super clear about your intentions. If you are not, quite a good deal of estate money can be wasted defending your Will.

Here are the four reasons a Will can be contested:

1. **Lack of Correct Formalities**. If the Will wasn't signed in accordance with state law and fails to meet the very stringent execution standards, it's not an enforceable Will and it cannot be used to transfer property at death. This is a big area of concern for anyone using an online service or do-it-yourself Will. If the signatures are not right, you might not have a valid estate plan. And if the Will is declared invalid, your estate can be distributed under a prior Will (with valid signatures), or according to state intestacy laws.

2. **Lack of testamentary capacity**. This can invalidate a Will on the grounds that the person executing the Will was incompetent at the time they signed it. This issue is typically raised when a person with less-than-perfect mental capacity modifies their Will and removes beneficiaries named under a prior Will. The level of capacity required to execute a Will isn't very high. In order to be competent to execute a Will, a person needs to know the nature and value of their assets, who would receive their assets if they didn't have a Will, and the legal effect of signing the Will.

### FOR MORE INFORMATION CONTACT:

ELDER LAW & ESTATE PLANNING CENTER, BRIAN T. TREACY, ESQ  
10 PINCKNEY COLONY ROAD – BLDG 300 – 843.757.5294 – [WWW.HILTONHEAD.ELDERLAW.COM](http://WWW.HILTONHEAD.ELDERLAW.COM)



### **Will Contests cont'd**

3. **Undue influence.** As one ages, one becomes more reliant on others for care and assistance. If the person providing that assistance is in a confidential relationship with you, that person is in a position to influence many decisions; so much so that you can lose your independent thought processes. If your daughter who cooks and cleans for you suggests that unless she gets the house, she won't be able to continue helping you, what might you do? What if a hired caregiver threatens to withhold your medication unless you change your Will to benefit them? When a Will has unequal distributions, or distributions to non-family members, a court is reasonably concerned that the Will was created out of fear that the favored beneficiary would cease caring for or even harm the person making out the Will.

4. **Fraud.** A person is given a contract to sign, and it turns out someone slipped a Will into the document and the person didn't know they were signing a Will. The Will is invalid because it clearly isn't an expression of the person's intent.

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