

WILL CONTESTS IN NEW YORK: AN OVERVIEW

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The only way to overturn a will is to present a legally sound challenge and prove the underlying facts. We are going to present the most common scenarios in which a successful New York will challenge is possible.

✓ **Pressured to Make a Will:** As the previous generation gets older, they depend more on their relatives and caretakers and they naturally get more trusting of others. Sadly, the people they trust most are the ones that sometimes take advantage of them. Even more unsettling, some older people are victims of mental and even physical abuse. If a will was made under those circumstances, it can be declared invalid.

Example:

Cathy moved from New York to Florida. Her sisters convinced her mother in New York that Cathy does not care about her. Cathy's mother left her out of her will.

Duress and Undue Influence



Duress is when the testator is threatened

Undue Influence is when the testator is taken advantage of

Example: Brian's elderly father lives in a nursing home. His nurse convinced him that Brian betrayed him by putting him into a nursing home. In anger, Brian's father made a new will leaving most of his assets to the nurse.

✓ **The Will is a Forgery:** The signature on a will is forged or imported from another document. Or, the text is manipulated – the pages are replaced or the text is changed.

✓ **Not Well Enough to Make a Will:** Some people are just not well enough to make a will. For many people, by the time they decide to make a will, they are no longer capable of doing so. This is true for some of those who suffer from dementia or mental illness and those in the late stages of Alzheimer's. Some people are in

such a weak physical state that they lose their mental capacity - some are so weak, that they are semi-conscious. A will is not valid if made while the testator was under the influence of medicine or illicit drugs, and a will is not valid when the testator was drunk.

Some people, as they get older, may drift in and out. A successful will contest will depend on proving that the will was executed during the testator's unsound time, not during the lucid moments.

✓ **Fraud:** Fraud occurs when the will is heavily influenced by a lie, most often by the will maker hearing something negative about a relative. Fraud can also occur when the will is slipped to the one signing it under a guise of another document or in a pack of other documents.

EXAMPLES

Example 1: John is told by his son Anthony that his son Steven is dead

Example 2: Martha tells her husband Peter that their daughter Jessica is not his.

Example 3: Julia tells her brother Warren that his wife Anna cheated on him.

Example 4: Andrew is given "hospital papers" to sign by his son Adam, and it turns out to be a will.

✓ **Improper Execution:** It's not enough to just write a will. To be valid, a will has to be executed in accordance with New York will execution formalities. The most common will challenges involve problems with witnessing the will and problems with the testator declaring it to be the last will and testament to the witnesses.

Minimal Requirements For a New York Will



- (1) Must be signed by the testator
- (2) Signature at the end of the will
- (3) Signed by 2 witnesses
- (4) Maker of the will signed in the witnesses' presence
- (5) Maker of the will told the witnesses that this is his will and asked them to be witness to his will, and
- (6) The entire ceremony must be completed within 30 days of the testator's signature.

✓ **Combination of Factors:** When it rains it pours. Problematic wills often have more than one problem. It is the ones who are not well enough to make a will that are lied to or pressured to make a will. Those wills are often made in a hurry and are not properly executed.

What's Next?

If you've read this article and think that you have a possible will contest, the next step is to contact an attorney and describe the circumstances that led you to believe that you have a will contest. The attorney will determine whether you have enough cause to object to the will, and may request a kinship hearing or the court examination of those involved before deciding whether it is worth your while to invest in a full-blown will contest.

It is common for a will contest to settle before trial, especially if family is involved. If settlement is not possible, the sides exchange documents and information and ultimately proceed to trial.



Don't Miss the Deadline!

Be sure to show up at the first will probate hearing, otherwise your chances get worse.

The No Contest Clause

A no contest clause in a will threatens to disinherit a beneficiary who decides to challenge the will. It tells the beneficiary that he can choose to keep what was

given to him under the will or take nothing. In New York, such clauses are given effect with certain exceptions.

If a will has a no contest clause it's almost always a bad idea to challenge that will. However, it is a good idea to ask an attorney whether something can still be done about the will.

Because the no contest clause is not always clearly labeled, it is important to closely examine a will before objecting to it, to make sure that it does not have a no contest or *in terrorum* clause.



**BEWARE:
No Contest Clause**

Challenging a will with a no contest clause can result in losing your inheritance.

You Decide

Whether or not to challenge a will is a decision that should not be taken lightly. Being unhappy with the dispositions your loved one made is not enough to successfully contest your loved one's will, but if you've determined that you have enough grounds, you may very well succeed in a will contest.