Grounds for Contesting and Challenging Wills in South Carolina

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Daniel "Frank" Blanchard, III

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Most people assume that a last will and testament, or at least a document purporting to be one, is the final say in what happens to a person's estate. But there are ways to challenge wills in South Carolina, provided that certain criteria are met. This article outlines the grounds for contesting and challenging wills in South Carolina.

Even if you have grounds for doing so, you may be in for a legal fight from the executor, fellow estate heirs, and others. You need serious and dedicated legal counsel that understands how to successfully contest a will. Count on Rosen Hagood's Probate and Estate Litigation team.

Grounds for Contesting and Challenging Wills in South Carolina

What are the grounds to contest a will in South Carolina?

It's important to understand, first, that an individual must have legally sufficient grounds before he or she can challenge a will. Being unhappy with one's inheritance or even being left out of a will entirely do not, alone, meet the legal standard. These are a few of the most common bases for objecting to a will:

Lack of testamentary capacity. This means the testator was not of sound mind to either create or alter the will. Medical evidence is usually necessary to establish this. For instance, there may be evidence the testator suffered from dementia at the time of executing the challenged will.

Undue influence. Forcing, coercing, or threatening a testator to include terms in a will he or she would ordinarily not include is strong evidence of undue influence. A good example is a stranger suddenly showing interest in the testator's property and attempting to persuade the testator to make changes to the will.

Fraud. Fraud could include anything from forged signatures to missing or replaced pages in the will. It would also cover false statements made to the testator that affected the contents of the will.

Lack of formalities. There are certain legal requirements for properly drafting, witnessing, and executing wills in South Carolina. If these are not met, the will may not be valid.

Who can contest a will in South Carolina?

Only interested parties have standing to challenge a will. These are generally individuals who have a financial stake in the will, such as an heir or someone who was once an heir but was subsequently disinherited. If you're unsure whether you qualify to contest a will, reach out to

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us.

What are the steps to challenging a will?

It's a good idea to assemble whatever evidence you have that the will is invalid or was executed under questionable circumstances. An attorney can assist in acquiring and developing more evidence, but you can start today by organizing whatever you currently have.

Probate is the process by which the court administers the distribution of estate assets to heirs and beneficiaries. Once a personal representative of the estate is named, and probate is opened, you only have a limited amount of time to challenge the will. It is imperative that you work with an experienced probate and estate litigation attorney to timely file a claim to contest the will.

Your lawyer will draw up a complaint which includes the factual allegations supporting the claim that the will is invalid (e.g., undue influence). Your attorney will also file the complaint with the court and provide the required notice to other interested parties. After the will contest commences, discovery can begin. This is the formal process by which parties to a lawsuit exchange relevant information and evidence. There may be pre-trial motions, but ultimately the litigation will lead to a hearing. You and the other parties will have the chance to make your case in court. You may have the right to demand a jury trial depending on the type of claim.

Regardless of what the judge or jury decides, you can expect emotional tumult between you and the other heirs and beneficiaries. Having steady legal counsel will help guide you through this process while protecting your best interests. If you are ready to begin a will contest, or if is there another interested party who has already initiated one, please call the Probate and Estate Litigation attorneys of Rosen Hagood today for a consultation. Our attorneys are experienced in prosecuting and defending against will challenges.

To learn more call (843) 577-6726 or email us through our contact form.

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