

What to Expect if You Are Challenging a Will in South Carolina

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Daniel "Frank" Blanchard, III

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A last will and testament should accurately reflect what a person desires to happen to his or her estate upon death. However, not all wills are created equally. For one reason or another, a will could be suspect. Loved ones may question the circumstances in which the document was drafted and executed. In still other cases, disgruntled family members who believed they should have inherited something (or inherited something else) may question why they didn't.

Contesting a will is a possible option. But there are only limited situations in which this can be done. Having a skilled **estate litigation lawyer** is a good first step to either challenging the will or defending its validity.

How to Challenge a Will in South Carolina

If you believe the wishes of the testator (person who made the will) were not accurately contained in the will, probate litigation may be necessary. It starts with articulating the **grounds for contesting the will**. Some recognized reasons include:

Lack of Capacity

In order to make or change a will, a testator must be of sound mind to understand what they're doing. There may be medical evidence or eyewitness testimony indicating there was a lack of capacity.

Undue Influence

Undue influence occurs when someone forces or coerces a testator to include terms in a will they ordinarily would not have included. A tell-tale sign of undue influence is a new "friend" – such as a caregiver – suddenly appearing toward the end of the testator's life and exerting influence over the will.

Lack of Formalities

Wills must be properly drafted, witnessed, and signed in accordance with various requirements under state law. An estate litigation lawyer can explain more details about these formalities. Without them, the will may not be valid.

Fraud

This comes in many forms, from forged testator and witness signatures to pages being removed from or replaced in the will. Fraud also includes false statements made to the testator that influence the terms of the will.

Steps to Contesting a Will

Only individuals with standing can challenge a will. Standing means you are an heir to an estate, or you were named as a beneficiary in an earlier will. Your standing may be challenged if it's not immediately clear that you're an heir or beneficiary.

Once a personal representative to the estate is appointed and the will is opened for probate, you have only a limited time to challenge the will. Contact an experienced **estate litigation lawyer** right away.

Your lawyer will help you file a written objection in the form of a summons and complaint. This will formally trigger probate litigation by laying out the basis for the will contest. Family members and other interested parties must be put on notice of this challenge. You should be prepared to set forth clear arguments for why the will is invalid.

After the contest commences, you can expect discovery to take place. This is a formal process that involves exchanging certain relevant information and documents concerning the assertions in the complaint. You will both send and receive a number of discovery requests.

Also expect there to be pre-trial motions and, ultimately, a court hearing. At the hearing, the person contesting the will has the chance to offer evidence and arguments to convince the judge. The person opposing the will contest can make their case as well.

One more thing you should expect is emotional turmoil. Losing a loved one is hard enough, but any type of probate litigation can be excruciating. Emotions run high and there will almost certainly be accusations and counteraccusations no matter what side you are on.

Contesting a will requires not just an understanding of South Carolina estate and probate law, but also the rules of evidence and civil procedure. These rules ensure that trustworthy evidence and testimony are submitted in court and that everyone who has a right to be heard is given their due process.

Having an estate litigation lawyer is therefore invaluable. Do you want to learn more about how to **contest a will in South Carolina**? Reach out to **the trusted team at Rosen Hagood** today.