

## **INHERITANCE LITIGATION AND WILL CONTESTS**

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Inheritance disputes arise in many ways—including from unfair will provisions, beneficiary designations, or other estate planning instruments. When there is reason to believe estate planning documents are the product of fraud or undue influence, or were made at a time when serious questions existed about the mental capacity of the individuals making them, experienced counsel should be consulted to determine whether legal remedies may exist.

In some cases, an estate plan may not reflect the considered intent and free will of the person making the will (the “testator”). For example, it may reflect the confusion or mistake of the testator who, at an advanced age or with diminished capacity, did not adequately understand the formalities of the document, did not comprehend the amount of his assets, or did not understand the nature of his relationships. The estate plan may even reflect the deceitful influence of a third party, intent on obtaining more than he or she would otherwise be entitled to receive. In such cases, an estate plan may need to be challenged in court to prevent a dishonest beneficiary from being unjustly enriched at the expense of deserving heirs.

There are legal options designed to remedy defects in estate planning documents. Wills, trusts, beneficiary designations, and other estate planning instruments can be challenged or reformed to more consistently reflect the testator’s true intention and free will. However, the rules for such challenges are complex and may require the assistance of experienced counsel. Our attorneys have extensive experience with these issues. Please contact one of our attorneys listed below for a consultation.

### **Grounds for Challenging a Will, Trust, Beneficiary Designation or Gift**

Unhappiness with the provisions of an estate plan is not enough. To undo or reform an estate planning instrument, one must show that it has one or more of the following flaws:

## Lack of Proper Formalities

A will may be deemed invalid because it was not properly drafted, signed, or witnessed. To be validly executed in Wisconsin, a will generally must be signed by the testator of the will in the presence of two disinterested witnesses who also signed the will in the presence of each other and the testator. A forged will or a will reflecting the direct tampering of a third party lacks such formalities. Later additions or changes to a will by the testator without proper signature and witnessing, moreover, may not be enforceable.

## Lack of Clarity or Contradiction

To be enforceable, estate planning provisions must be objectively clear and consistent. For example, a bequest for “Mary” with no further identification as to which Mary, or a bequest of a specific car to more than one beneficiary, may result in confused beneficiaries and not necessarily an enforceable bequest.

## Lack of Capacity

The execution of a valid will requires a requisite level of mental capacity. The testator must have a general understanding of the nature of his or her assets (approximate amount and value) and the identity of his or her beneficiaries (who they are and their relationship to the testator). A millionaire who believes he or she is penniless or a mother who cannot name her children may lack the capacity to execute a will. Under certain circumstances, lack of capacity may be established through a prior diagnosis of dementia, Alzheimer’s, mental illness, or evidence of irrational conduct of the testator around the time the will was executed. Harboring an irrational belief despite objective evidence to the contrary might also indicate lack of capacity.

## Undue Influence

Undue influence describes pressure improperly imposed by a third party on the testator of a will through fraud, force, or coercion, with the objective of obtaining a larger share of the testator’s estate. Those applying such pressure may be a relative or friend of the testator, trusted advisor, health care worker, or anyone else who holds a position of power or influence over the testator. Undue influencers often upset a long-established estate plan through which the estate was to be distributed equally among the testator’s natural heirs. The influence exerted must rise to the level of being “undue.” Evidence of influence which is positive or based on truth generally will not negate a will. Examples of undue influence include a sibling coercing a parent, through lies and other fraudulent means, to disinherit another sibling; a new friend or acquaintance improperly isolating an elderly person from her family in the last months of her life in order to secure a share the estate; or a caregiver implicitly or explicitly

threatening to withhold care unless an estate plan is changed in his favor. To the extent the testator's estate plan reflects such improper pressures, the estate plan potentially may be negated.

## Tortious Interference with Inheritance

Tortious interference with inheritance describes a legal action in civil court against an alleged wrongdoer based on undue influence, fraud, or other wrongful conduct. For example, a tortious interference with inheritance claim may be brought when no will was written or a will was revoked as a result of undue influence or coercion; it can also be used to challenge improper beneficiary designations or other transactions that keep assets from being distributed under a person's will or trust.

While the common term for such challenges is a "will contest," they are not limited to wills. These challenges may also be brought to negate certain aspects of other estate planning documents, such as trusts, marital property agreements, beneficiary designations, pay on death accounts, real estate deeds, or even to challenge the absence of a will.

## How are attorneys paid in will contests?

Fee arrangements are made on a case-by-case basis and can be on an hourly, contingency, or blended fee basis. An hourly fee is determined by multiplying an attorney's hourly rate by the number of hours the attorney worked on the case. Hourly rates differ among attorneys based on levels of qualification and experience. Contingency fees are usually paid as a percentage of the gross amount recovered for the client. Blended fees are a combination of a reduced hourly fee and a contingency fee. In most cases, the client is required to provide a cost retainer, to pay for costs such as deposition transcripts, service of process, investigative fees, etc.

Wisconsin law provides that certain attorneys' fees and costs may be able to be paid from a probate estate, if expended in a successful will contest or otherwise to the benefit of the estate. Lawyers

a:11:{i:0;s:5:"16269";i:1;s:5:"16582";i:2;s:5:"17974";i:3;s:3:"246";i:4;s:5:"17312";i:5;s:3:"274";i:6;s:3:"275";i:7;s:5:"17105";i:8;s:5:"16401";i:9;s:3:"236";i:10;s:5:"16709";}