

How To Successfully Contest A Will

by [Brette Sember](#) June 23, 2016

7 SHARES



We've all seen it on TV and in movies, [as well as in real life](#): wills can trigger nasty squabbles and bruised feelings. Some people don't want to talk about what is in their will, which can lead to some big surprises when they die, particularly if their children or grandchildren have been cut out of the bequests.

If you've been left out of a will you may be shocked, angry, hurt, and confused. But although you may never know why your loved one made this decision, you do have some recourse.

Contesting the will as a spouse: the right of election

If your spouse left you out of his or her will, in most states you have what's called the right of election, which means you can reject the will and instead receive a certain dollar amount or percentage of the estate in accordance with your state's laws. A spouse can use this procedure to contest a smaller than expected bequest as well. The right of election is grounded in the common law notion that marriage is, in part, an economic union, and therefore a surviving spouse is entitled to a fair share of the couple's assets.

Contesting the will as another type of heir

No one other than a surviving spouse has an automatic right to inherit, which means that children, grandchildren, life partners, and others can be left out by the person creating the will. But while such parties do not have an automatic right to inherit, they can contest the will's validity on a variety of grounds:

Improper signing

If the will wasn't signed in accordance with your state's laws, you may be able to have it thrown out. Most states require the testator (will-maker) sign the will in the presence of two witnesses. If this procedure was not followed, the will may be deemed invalid.

Lack of capacity

A common approach to invalidating a will is to show that the testator did not have the capacity needed to create and sign the will. To successfully invalidate a will based on lack of capacity, you must be able to prove that the testator did not know what his or her assets were and their value, did not understand who his or her logical heirs were, or did not comprehend the legal effect of signing the will. By the way, just because grandma had Alzheimer's doesn't necessarily mean her will can be automatically invalidated. People suffering from dementia or other mental conditions can still be considered capable of executing a will, provided they intermittently displayed the required mental capacity.

Undue influence or fraud

If someone forced the testator to sign the will, got him to sign it without realizing he was signing a will, or switched out pages in the will when the signature happened, the will would not be valid.

There is a later will or codicil

A will can be invalidated if another one, signed at a later date, turns up. The most recent will is used and the old one is disregarded. If your loved one signed a codicil (an amendment) to the existing will, both the codicil and will are probated, and any changes or additions made in the codicil are controlling. You can, however, contest a codicil in the same way you would contest a will.

What happens when a will is invalidated

If you succeed in getting the will thrown out, a number of things could happen. If there is an older will that was signed before the now invalidated one, that older document could take effect if approved by the court. If there is no other will, then the estate will be divided according to the terms of your state's intestacy laws, which list how assets are divided among family members in the absence of a valid will. Generally, the assets are divided among the spouse and children; other relatives come into play if there is no spouse or child.

Are you creating your own will? To make certain that your final wishes are respected, it's a good idea to double-check all your documents and [be sure that your own will can survive challenges](#).

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