

“Trust, but verify”

- Ronald Reagan

How to Challenge an Arizona Will

Introduction

A common question confronting many family members following the death of a loved one is, “what rights do I have to challenge a Will when the Will’s distributions are questionable or it contains a No-Contest clause?” Accordingly, this article will discuss the grounds for contesting a Will as well as a brief explanation of No-Contest clauses. If after reading this article, you believe that you have grounds to challenge the terms of a Will, do not hesitate to take legal action as time is of the essence.

Methods to Contest a Will

In order to successfully contest an Arizona Will, the person contesting the Will must prove that the deceased person (aka testator) either:

- 1) lacked the necessary **testamentary capacity** when executing their Will;
- 2) executed their Will under **undue influence**;
- 3) executed their Will as a result of **fraudulent misrepresentation**;
- 4) executed the Will by **mistake**; or
- 5) the Will document itself did not meet legal Will **formation requirements**.

Methods for Contesting a Will Explained

If one of the following factors is not properly satisfied, a Will can be successfully invalidated in whole or in part.

1. Testamentary Capacity

Testamentary capacity is a requirement for a valid Will. In Arizona, testamentary capacity requires the testator to be 18 years or older as well as have the mental capacity to execute a Will. Courts will generally use the following factors in determining whether the testator had the requisite mental capacity:

- i) An understanding of the nature of the act being performed; (e.g. Did the testator know that they are executing a Will?)
- ii) An understanding of the nature or character of the property at issue; (e.g. Did the testator understand what the Will disposes of?) and
- iii) An understanding as to who holds a claim to testator’s assets and how those claims are affected by the terms of the Will.

In the event the testator lacked the requisite mental capacity to form a Will, the provisions of the Will can be challenged and deemed invalid depending on the scope of the testator’s capacity.

2. Undue Influence

A testator whose Will is the product of undue influence, can be deemed invalid. Undue influence occurs when a 3rd party, “through their power over the mind of the testator, influences the testator’s desires to conform to those of the 3rd party exercising the undue influence and not to the desires of the testator.” Although there is not a bright line test for determining undue influence, various factors have been used to evidence undue influence, including:

- i) the existence of fraudulent representations made by the 3rd party to the testator;
- ii) whether the execution of the Will was done hastily or without careful consideration;
- iii) whether the Will’s execution was kept a secret from others;
- iv) whether those individuals benefiting under the terms of Will were instrumental in preparing the Will’s drafting or execution;
- v) whether the Will was consistent or inconsistent with the testator’s prior Will(s);
- vi) whether the Will was consistent with the testator’s lifestyle and family views; and
- vii) whether the testator was susceptible to undue influence.

In the event it is determined that certain provisions of the testator’s Will are the result of undue influence, generally, only those terms of the Will will be deemed invalid. However, under certain circumstances, undue influence can invalidate an entire Will.

3. Fraud by Misrepresentation

A Will can be invalidated by fraud by misrepresentation if it is shown that:

- i) a beneficiary made a false representation of material fact;
- ii) the beneficiary knew the representation to be false;
- iii) the beneficiary made the misrepresentation for the purpose of inducing a Will in their favor; and
- iv) the misrepresentation resulted in the testator’s making a Will different from that which would have been created in the absence of fraud.

It is important to understand that fraud by misrepresentation may occur not only by word or act but also by failing to reveal a material fact. When it is determined that fraud by misrepresentation has occurred, the remedy is to invalidate the portion of the Will affected by the fraud.

4. Mistake

A mistake in the terms or preparation of the testator’s Will can be used to set aside the terms of the Will. However, a mistake will generally only be sufficient to invalidate the terms of a Will when the mistake involves the testator signing the wrong document(s) (for example, if the testator accidentally signs his wife’s Will, the wife’s Will cannot be used as the Will of the testator even though the terms of the wife’s Will would be substantially the same as that of the testator’s) or certain words are erroneously included in the terms of the Will.

5. Formation Requirements

In order for a Will to be a valid attested Will, it must meet the following formation requirements:

- 1) The testator must be at least 18 years of age and of sound mind;
- 2) The Will must be signed by the testator or by someone directed to sign by the testator and such signing must take place in the conscious presence of the testator;
- 3) The Will must be signed by two attesting witnesses;
- 4) The witnesses must have witnessed either the signing or the testator's acknowledgement of their signature on the Will; and
- 5) The testator must have had the intent to execute their Will.

However, even if the Will does not meet the above referenced formation requirements, the Will can be valid if it meets the requirements of a Holographic Will. A Holographic Will is valid so long as the signature and material provisions of the Will are in the handwriting of the testator.

Recognizing a No-Contest Clause

A No-Contest clause is a provision within a Will that sets forth if a beneficiary under the Will challenges any portion of the Will, the beneficiary shall be disinherited. An example of a No-Contest clause could read: *“if any person attempts to contest or oppose the validity of this Will, then that person will forfeit his or her share, cease to have any right or interest in the Will assets, and for purposes of this agreement, be deemed to have predeceased the last of us to die.”* As a result, No-Contest clauses can have a chilling effect on stopping a beneficiary from attempting to challenge the terms of a Will.

Challenging a No-Contest Clause

Under A.R.S. §14-2517, a provision in a Will purporting to penalize an interested person for contesting the Will or instituting other proceedings relating to the estate is unenforceable if probable cause exists for that action. Probable cause simply means that a certain level of reasonable belief exists based on facts that can be articulated. Therefore, if you are a beneficiary under a Will that has a No-Contest clause, the Will can be contested so long as there is a good reason, supported by facts, to contest the Will. The outcome will be determined by the court as the facts are evaluated.

Conclusion

If you believe that the circumstances surrounding the formation or execution of another's Will are questionable, you should immediately contact an attorney to determine your rights. As time is of the essence when contesting a Will, do not delay in contacting an experienced attorney. Failure to act in a timely manner can result in the testator's assets being fraudulently squandered.

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