

10 Things to Know about Will Contests/Estate Disputes

1. Time may be running out.

An estate dispute (more formally known as a will contest) is like any other litigation matter in that there is a limited window of time for an injured person to file their claim. Often, people hope that the situation will resolve itself over time, and they accidentally find that they have missed out on the window to file their claim. If you feel like you have been wronged in an estate, it is important to consult an attorney as soon as possible to determine how long you have to file a claim.

2. Does a forfeiture clause mean I can't dispute a will?

Our clients are often concerned about initiating an estate dispute because there is language included in a will stating anyone who initiates a dispute will be barred from inheriting anything from the estate. These clauses are called forfeiture clauses or in terrarium clauses. These types of clauses do have a purpose, but they have been limited by most courts. Typically, the court is going to enforce this clause only if a person starts a dispute without any basis or good faith for such a dispute. This is not a common occurrence. Most people who initiate disputes do so because of legitimate reasons. Therefore, these clauses are not enforced by courts very often.

3. Will my dispute be tried in front of a jury?

You have the right to have your estate dispute tried by a jury. This is a powerful right for any person who feels there has been inappropriate behavior within an estate. This gives them the right to present their grievance for the consideration of their peers instead of a judge. Often, estate dispute cases are highly emotional and fact-driven. These types of cases frequently lend themselves to resolution by a jury.

4. What is undue influence?

This is one of the most common grounds for initiating an estate dispute. Undue influence is based on the belief that the person who made the will was under an inappropriate level of influence from a party who benefited from the will. There are a lot of factors that come into play to determine whether undue influence exists in a particular case. What we are looking for is a high level of control by the party who benefits and submission by the person who made the will.

5. What is lack of testamentary capacity?

This is another common ground for initiating an estate dispute. It is based off the belief that the person who made the will did not have the necessary level of capacity to make the new will. We typically try to determine whether the person knew whom their family was and knew what assets they owned. This is a simplified summary of the facts that control a lack of testamentary capacity case, but these are the two broad categories we focus on to determine whether the will is valid.

6. What is lack of testamentary intent?

Lack of testamentary intent is the next-most-common ground used for an estate dispute. When a person makes a will, they have to possess intent to make the new will. If they lack intent, such as they were just jotting down ideas, or this final document was meant merely as a draft, then the person may lack the necessary intent for a valid will to exist.

7. What happens if the original will is lost?

It is usually required that an original will be submitted to the court when an estate is opened. If an original is not available because it has been lost or destroyed, an interested party can contest the copy of the will. If an original will is not available, the party disputing the validity of the copy can claim that the original was destroyed or revoked by the person who made the will. Lost will cases are highly complicated and very fact specific.

8. Who has standing to dispute a will?

Only persons who have a direct financial interest in the outcome of an estate dispute have “standing” (the right to file a dispute) to contest a will. If you do not have direct standing, then the court will not permit you to come into the action. There are several factors that impact whether a person has standing or not. It is not uncommon for standing to be one of the more complicated questions that must be resolved in an estate dispute matter.

9. Who administers the estate during a dispute?

If an estate dispute has been commenced, then the court will often appoint a third party to take over the day to day administration of the estate. This means that neither of the parties fighting with each other over the validity of the will (or whatever the dispute may be) will continue to have control over the estate. A third party will manage the estate and allow the parties that have an interest to resolve their dispute.

10. What is a family settlement agreement?

One of the most powerful tools (although often overlooked) in an estate dispute is the ability of the family to resolve their dispute among themselves. The courts encourage families to work out their disputes and avoid bringing the family matter to the court for resolution. Family settlement agreements can cover just about any matter in controversy, from which will is valid, to how the terms of a will should be interpreted. This is a very powerful and useful tool for resolving estate disputes.