

BUTTERMORE AND FOLTZ
ATTORNEYS AT LAW

Will Contests

In spite of the most sincere wishes of the deceased, family members may squabble over the Estate and sometimes challenge the Will, as well as challenge the Administrator. A proper Will lays the foundation for any distribution scheme which strays from normal. Normal distribution schemes are those prescribed by state law in the event that there is no proper Will. If there is a spouse and children, a division is made between them. If a child predeceased the deceased, provision is made for their children. Individuals legally adopted as children have the same rights as natural children. Normal distribution schemes do not provide for the spouse of children or grandchildren. In some circumstances, individuals die with no spouse and no offspring. In this case the law looks to consanguinity – the degree of separation. If you intend to challenge a Will on the grounds of incapacity (lack of mental comprehension of the document) or undue influence (abuse of a confidential relationship) this should be done immediately. A timely “Caveat” can prevent the start of Administration until a Judge has heard arguments. Even if Administration has begun, you can still challenge the Will prior to a distribution of assets.

You should know that competence to make a will is the lowest form of competence recognized in the law. Also, an individual is presumed competent until proven incompetent. A finding of incompetence requires a contemporaneous examination by two medical doctors. Contemporaneous means contemporaneous with the date that the Will was executed.

Undo influence refers to the abuse of a confidential relationship which skews the decedent's true affections. Confidential relationships can be one with lawyers, doctors, nurses, caregivers, companions and in some cases, relatives. However, an individual who favors one child over another is usually demonstrating their true affection, and this is generally not grounds to find undue influence.

Will contests are rarely successful, but are extremely dependent on the facts. You should consult an Attorney who can evaluate your individual facts.

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