



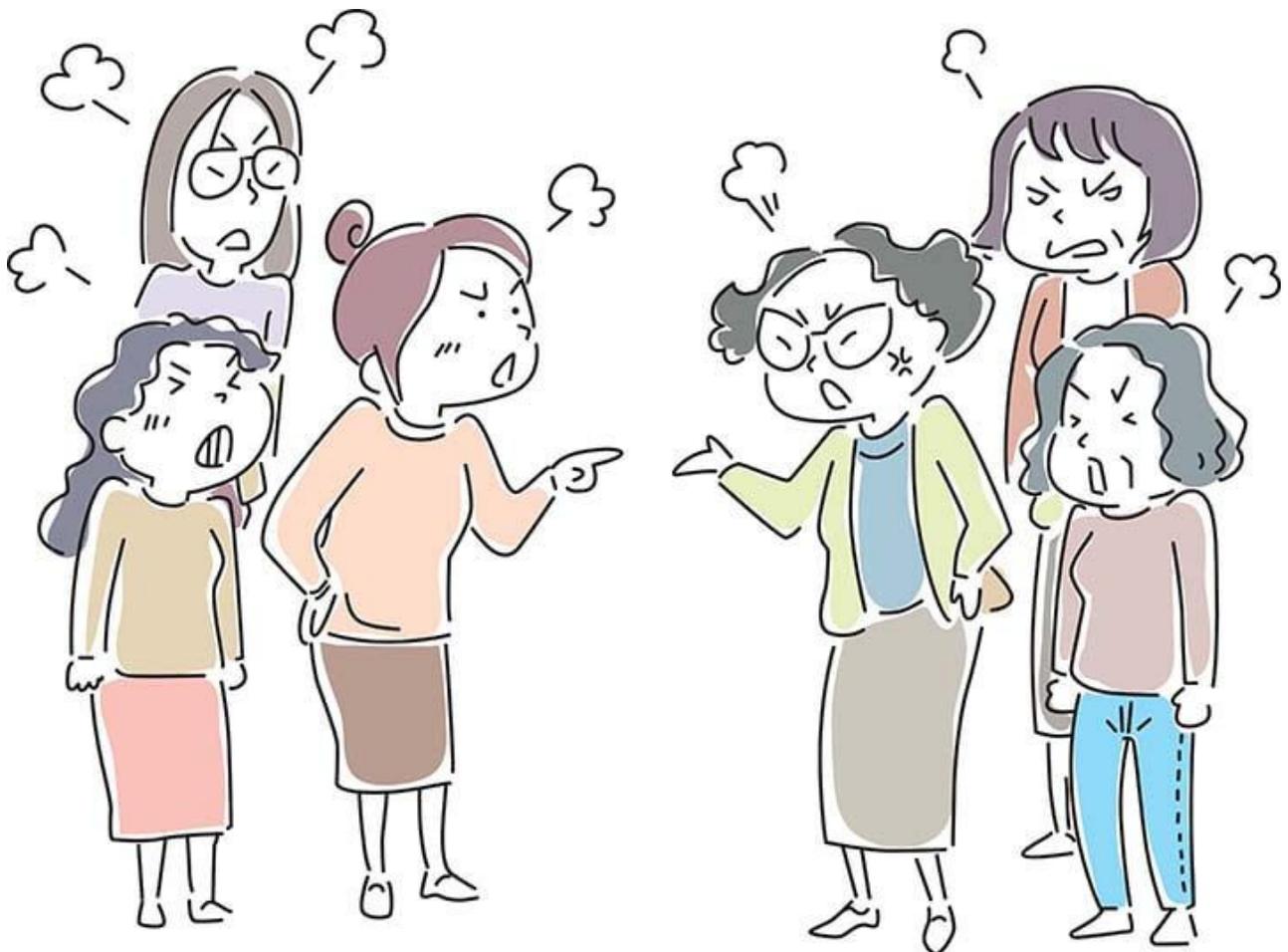
Can Estranged Relatives Contest Your Will After You Pass Away?



by Lorelei Laird
Freelance writer

It's an unfortunate truth of probate law that [relatives tend to fight over estates](#) with lots of money. That may be especially true when the will leaves someone out, even if there's a good reason for that choice.

When estranged relatives contest a will, they can drag the matter out for years, draining the estate's money, even if they lose. If that's a concern for you, consider writing your will to reduce [the chance of a successful challenge](#).



What Happens When You Contest a Will?

After someone dies, their will goes through a court process called probate, in which a chosen person counts the deceased's assets, settles their debts, and distributes anything left over. To contest the will, estranged relatives must intervene and ask the court to decide whether they're entitled to money or property.

Legally, challenges to a will can only come from [people who stand to inherit something](#), in this will, or another version of it or people who qualify as heirs under state law. Who can contest a will as an heir varies from state to state, but the spouse and children are usually first. Thus, if a child is left out of the will, they can contest it under the right circumstances. Stepchildren can contest a will only if they're named in a version of it, or if the deceased person adopted them.

Related Article: [How Much Money Does It Cost to Change a Name?](#)

Estranged relatives can't contest the will before the court opens a probate case because, legally, there's nothing to contest. So, the question is not how long after death you can contest a will, but how long after probate starts.

The time limit to contest a will varies from state to state and according to your circumstances, but it ranges from a few weeks to several years. After the court case ends, relatives may still be able to challenge your will, but it's generally more difficult and expensive.

Writing an Airtight Will

You can [write your will](#) in a way that denies estranged relatives grounds to contest it. Typical reasons to contest a will under state law include:

- The will is missing elements required to make it valid in your state, such as the right number of witnesses.
- The writer of the will had diminished mental capacity when writing it.
- A newer will supersedes this one.
- The will is forged or a fraud.
- Someone manipulated the writer of the will (exerted "undue influence").

To make sure your will is legally valid and clearly not a forgery, you can [hire an attorney](#) to write the will for you or flag any problems. Clearly date your will and keep the newest version of it in multiple places that heirs can access after your death.

New York trusts and estates lawyer [Michael Kutzin](#) lays the groundwork to prevent undue influence claims well before the will is written, by making sure his clients understand what they're signing and who counts as family members. And he makes sure that, during a significant part of the meeting, clients are separated from any family member or caregiver who might be accused of undue influence.

"I watch very carefully to make sure that the child is not pushing their way into the door," says Kutzin, a partner at [McCarthy Fingar LLP](#) in White Plains, N.Y. "Because only the parent is my client at that point."

You can [avoid challenges to your will](#) in other ways as well. Most importantly, you can talk to your loved ones about your plans, which ensures that they're clear on what you want and creates evidence of intent and mental capacity. Jane Fearn-Zimmer, of [Flaster Greenberg](#) in Cherry Hill, N.J., adds that making a gift during your lifetime might put the recipient in a bad position to file challenges later.

"Because they have accepted the gift, they have a lot of trouble answering the question of 'Well, why did you take the gift if your dad wasn't competent?'" Fearn-Zimmer says.

In some states and some situations, it might make sense to put your assets in a trust. Kutzin would consider this in New York but, in New Jersey, certified elder law attorney Lawrence Friedman of [Friedman Law](#) in Bridgewater, N.J., says it adds cost and complication without much benefit in a simple case.

What Is a No-Contest Will Clause?

According to Fearn-Zimmer, a no-contest clause in a will—also called an in terrorem clause—is a kind of safeguard in a will to prevent a contest. Typically, it would say that if anybody who otherwise stood to inherit challenges the will unsuccessfully, they lose the money they would have inherited. This creates an incentive not to contest the will.

This approach has limits. Such clauses are not enforceable in Florida, and Friedman says they're very easy to nullify in New Jersey.

"You get around it if you can show that the person contesting has probable cause to be concerned," Friedman says. "So on paper, it can be enforced in New Jersey, but there's a big chance of it not standing up."

It also requires you to leave at least some assets to the person you think might contest the will, because otherwise, they have nothing to lose from contesting it. If the original plan was to leave them nothing, this might be hard to swallow.

You may never need to worry about your will being contested. Attorneys who work in this field say that challenges are more likely when a lot of money is at stake, and the family has been out of communication. But if you have concerns, using some of the tips above may provide some peace of mind.

Ensure your loved ones and property are protected

START MY ESTATE PLAN

Related Articles

Property You Should Not Include in Your Last Will

You want to make sure you have all your assets covered, but did you know that not all property can be bequeathed through a last will and testament?

[read more](#)



Reasons to Avoid Probate

Probate is a court procedure every will must go through. If it's so common, why is it something people work so hard to avoid? Find out why you might want to avoid probate.

[read more](#)