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Family probate court

Sometimes even the best estate planning can't save you from probate, a court-directed process of transferring assets, money or property to a decedent's beneficiaries. The state you're in will have either a separate probate court or a special branch of the state court to handle probate matters. Both types of courts receive their jurisdiction, or power, from state statutes, which means that probate functions vary in each state. While all probate courts hold power to validate wills and administer a decedent's estate, some also handle other family matters, such as adoptions and child emancipation proceedings. If you're an heir to someone who died and left assets in a trust or estate, you will need a probate court's permission for those assets to pass to you. The courts determine if a will is valid, if title to any real property held by the estate is clear and whether the executor or administrator, who pays the estate's debts and distributes the assets, is doing so in accordance with the will's provisions or state law. This validation process sometimes requires a probate court to hold hearings where witnesses to a will must give testimony. In some states, probate courts make decisions that alter the rights of parents and decide custody for children. Connecticut's probate judges, for example, can remove minors from abusive homes. In Vermont, children under 18 can petition the court to emancipate them from their parents or guardians. Additionally, probate courts in both Vermont and Massachusetts sometimes must decide whether to allow adoptions by individuals who cannot obtain parental consent or who have criminal backgrounds. When it comes to protecting incapacitated individuals, probate courts typically have broad powers. Because mental and physical disabilities can impair an individual's ability to make decisions, probate judges appoint guardians to manage the individual's affairs until 18 years of age, for minors, or lifetime, for adults. That protection also extends to the individual's personal and real property. After the required probate hearings, a judge might restrict a guardian's control over an individual's assets, such as ordering the guardian to set up a separate bank account for the individual's money and seek the court's permission before making withdrawals. Judicial hospitalization matters often require probate courts to take a more proactive stance, forcing a mentally disabled person to be hospitalized against his will. Probate judges usually expedite these sensitive cases with back-to-back hearings in which witnesses on both sides argue for or against involuntary hospitalization. If an individual is committed, the court's job is still not done, as it must monitor the individual's progress through annual hearings to determine whether the hospitalization should continue. When someone passes away, their estate may have to go through the probate process. If they left a will, that document can be legally contested in probate court. There are several reasons why a will may be challenged. Understanding how the process works for contesting a will is important if you've been named as a beneficiary of someone's estate or you're concerned that your own will may someday become a subject of disagreement.What Is Contesting a Will?Contesting a will simply means that you formally object to the terms and validity of the will. Any interested party can contest a will. The definition of interested party is fairly broad. It means any person or business who could stand to gain (or lose) something if the will is successfully proven to be invalid.That includes people who may or may not be named in the will, as well as people who can inherit from you according to the inheritance laws in your state. Generally, interested persons may include: Children and/or grandchildren Spouses Siblings Parents Aunts and uncles Business partners Anyone named as your heir or beneficiary, including friends, non-blood relations or charitable organizations you pledge to leave money to In the case of children, minors usually can't contest the terms of a will until they're legally adults. But an executor or guardian could challenge a will's validity on their behalf if they're underage. Reasons for Contesting a WillThere are a number of reasons why a will may be legally contested during the probate process. Some of the most common grounds for challenging a will include: Questions about the mental state of the willmaker Claims of undue influence Suspected fraud or forgery Improper preparation or execution Every state has different guidelines with regard to all of the things mentioned above. But generally, for a will to be considered legally valid, it must be: Drafted by someone who is of legal adult age and of sound mind (that means they're mentally competent to create a legal will) Free of any outside interference or manipulation from someone who takes a financial interest in the will Drafted in accordance with the willmaker's state laws regarding wills Properly signed, witnessed and recorded or notarized if required by state law In other words, someone who's mentally ill or incapacitated wouldn't meet the legal standard to create a will, nor would someone who was forced into it. A will that isn't signed and witnessed could also be open to challenge, as could a holographic or handwritten will.Steps to Contesting a Will in Probate CourtProbate is a legal process that begins after someone passes away. It's handled by the probate court.If someone names an executor in their will, this person is responsible for taking an inventory of all the deceased person's assets and debts. They're also responsible for notifying anyone named in the will that it exists, liquidating assets to pay off the estate's debts if there are any and then handling the final distribution of property or assets to the will's beneficiaries.Step 1: Do Your ResearchThe first step in challenging a will is making sure you have grounds to do so. To do that, you may need to: Review the laws for contesting a will in your state Determine if your reason for wanting to challenge the will is covered by state probate law Learn how long after someone's death you have to raise an objection to a will Step 2: File a PetitionOnce that's done, the next step is taking it up with the probate court. To contest a will during probate, you'd need to file a petition to challenge the will in your probate court. This is something you could do yourself, although you may want to hire an estate planning attorney to handle it for you if there is a substantial amount of assets at stake or other people are also challenging the will.Step 3: Gather EvidenceOnce you've formally filed a petition to contest the will, the probate court will set a date to hear your case. During the time in between, you should be working on gathering evidence to support your claim that the will isn't valid. The kind of evidence that would be helpful to your case depends largely on why you're challenging the will in the first place.For example, say you're challenging your parents' will because you think their caretaker manipulated them into leaving them a large amount of money. You'd need proof that the caretaker had either coerced the will or had established a pattern of financial abuse of their accounts that could suggest the will was made under duress. In that kind of scenario, something like bank statements from your parents' account showing large transfers to the caretaker's account could go into your evidence file.Proving your case also means going beyond documentation and finding witnesses who can support your claim. Going back to the caretaker example, you might be able to offer testimony from a neighbor or a delivery person who saw or heard them attempting to manipulate your parents into leaving them money in their will.The more valid evidence you can gather, the stronger your case may be. Most importantly if you're contesting a will, take note of your court date or dates if there are multiple hearings scheduled. Be ready to appear and if for some reason you can't make it on the scheduled day, ask your attorney to have the case continued so you don't miss your chance to press your claim. Watch Out for No-Contest ClausesA no-contest clause could make contesting a will more difficult. Essentially, this kind of clause can be added to a will to specify that anyone who seeks to challenge or void the will can lose their interest in the estate.This can stop will contests dead in their tracks. If the person challenging the will can't prove it's invalid, they would lose anything they would have inherited. The exception to the rule is if someone were cut out of a will completely. If they were to take their case to probate court and prove the will is invalid, they'd then be entitled to whatever their state inheritance laws dictate they get from the estate.The Bottom LineChallenging a will can be both time-consuming and expensive if you have to hire an attorney. Even more, the case could drag on for months or years. Before contesting a will, decide whether it's worth your time and money. And be aware of any snags, such as no-contest clauses, that could throw an obstacle in your path.Estate Planning Tips You can minimize the chances of your own will being challenged after you pass away by working with an estate planning attorney to draft one. Your attorney can go over the state inheritance and will laws to make sure the document you create is legal and as immune from challenge as possible. Consider whether a trust should be part of your estate plan, along with a will. Assets transferred to a trust aren't subject to the probate process. A financial advisor can offer advice on whether a trust is right for you and which assets you might want to hold in the trust. Finding the right financial advisor that fits your needs doesn't have to be hard. SmartAsset's free tool matches you with financial advisors in your area in five minutes. If you're ready to be matched with local advisors that will help you achieve your financial goals, get started now. Photo credit: ©iStock.com/William Potter, ©iStock.com/Pattanaphong Khuankaew, ©iStock.com/vgajicPage 2Do you know enough about financial management to take care of all of your investing on your own? Or do you need help from a seasoned expert?That question comes up for millions of Americans each year.If any of these describe you, you could benefit from professional financial advice:1. You're retiring soon - Maximizing retirement income requires smart decisions around complex topics such as Social Security, 401(k) and IRA withdrawals.2. You manage your own investments - Individual investors should check their strategies with unbiased third parties. You may be overlooking opportunities in your portfolio.3. You have children - Whether you're saving for college or planning their inheritance, there are several ways to ensure your children are taken care of.4. You inherited money - Have you noticed lottery winners often declare bankruptcy? It can be difficult to manage sudden increases in wealth.5. You have a financial advisor - Depending on how you chose your advisor, there may be a better one for you. Family referrals are convenient but don't always produce results.6. You're divorcing - Untangling finances in a divorce can be messy. Impartial advice is key.7. You want to build wealth - If you're still decades from retirement, good decisions today can add thousands to your retirement accounts. See Your 3 Financial Advisor MatchesFinding the right financial advisor that fits your needs doesn't have to be hard. SmartAsset's free tool matches you with top fiduciary financial advisors in your area in 5 minutes. Each advisor has been vetted by SmartAsset and is legally bound to act in your best interests. If you're ready to be matched with local advisors that will help you achieve your financial goals, get started now. Probate court proceedings can be a mysterious process. After all, most of us wrap up the affairs of a deceased loved one only once or twice in our lives. You may want to hire a lawyer to handle the actual court paperwork for you, or to advise you as you go; you may decide to go it alone, with the help of materials provided by the court. (More and more courts are publishing very helpful overviews, forms, and instructions online.) Shepherding an estate through probate court usually involves a lot of paperwork, but no courtroom drama. If you decide to tackle probate without a lawyer, the court clerk should be your new best friend. You'll go to the clerk's office for forms, for instructions, and for all kinds of information about the probate court process in your county. Every county has its own peculiarities and requirements. Just don't go to the clerk's office for legal advice—they won't give it, because they're not lawyers. But that doesn't mean they can't be a very valuable source of how to make it smoothly through the probate process. Probate is a legal process that takes place after someone dies. It includes: proving in court that a deceased person's will is valid (usually a routine matter) identifying and inventorying the deceased person's property having the property appraised paying debts and taxes, and distributing the remaining property as the will (or state law, if there's no will) directs. Typically, probate involves paperwork and court appearances by lawyers. The lawyers and court fees are paid from estate property, which would otherwise go to the people who inherit the deceased person's property. To see everything Nolo has to offer when it comes to estates, executors, and probate, visit our Wills, Trusts & Estates Center. Probate usually works like this: After your death, the person you named in your will as executor—or, if you die without a will, the person appointed by a judge—files papers in the local probate court. The executor proves the validity of your will and presents the court with lists of your property, your debts, and who is to inherit what you've left. Then, relatives and creditors are officially notified of your death. Your executor must find, secure, and manage your assets during the probate process, which commonly takes a few months to a year. Depending on the contents of your will, and on the amount of your debts, the executor may have to decide whether or not to sell your real estate, securities, or other property. For example, if your will makes a number of cash bequests but your estate consists mostly of valuable artwork, your collection might have to be appraised and sold to produce cash. Or, if you have many outstanding debts, your executor might have to sell some of your property to pay them. In most states, immediate family members may ask the court to release short-term support funds while the probate proceedings lumber on. Then, eventually, the court will grant your executor permission to pay your debts and taxes and divide the rest among the people or organizations named in your will. Finally, your property will be transferred to its new owners. To learn more about the probate process—and reasons for avoiding it—see Nolo's article Why Avoid Probate?

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