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Contesting an Executor in a Will

by: Lori Ashmore Peters

Many Will contests are about trying to set aside a Will of a loved one because you felt you were unfairly left out of the Will. What happens if you were named in the Will but the Executor has failed to do anything?

It is important to understand the role of the Executor. An Executor serves in a "fiduciary capacity." An Executor has a fiduciary duty to an estate. They are in charge of:

- Probating the Will,
- Collecting the assets of an estate,
- Paying the debts and taxes, and
- Properly distributing the assets of the estate pursuant to the terms of the Will.

Executors are held to a higher burden, meaning they **MUST** put the interests of the beneficiaries and estate ahead of their own. It is also important to note that a Trustee also serves in a "fiduciary capacity." A Trustee **MUST** put the interests of the beneficiaries and Trust assets ahead of their own. They have

much of the same responsibilities of an Executor, however, it is the terms of a Trust document they must follow.

An Executor or Trustee can breach their fiduciary duty when they put their own interest above that of the beneficiaries and estate. Examples of a breach of fiduciary duty include:

- Failing to timely pay the debts,
- Failing to timely distribute the assets of the estate to the beneficiaries,
- Mismanaging the assets of the estate,
- Using the assets of the estate for their own personal use,
- Failing to follow the terms of the Will,
- Paying themselves a large amount of money to serve as the Executor,
- Improperly selling assets of the estate, etc.

If you think that an Executor or Trustee is not properly doing their job, we recommend speaking with an experienced [Probate Attorney](#) at our office to discuss your options.

Kissing Angels Good Morning: Charley Pride's Will Contested

by: Shep Sands, Ashmore Law Firm

A Will contest filed by an heir of a national and local celebrity, Charley Pride, has brought forth many questions regarding Will contests to those who aren't familiar with challenging a Will based on mental capacity issues and undue influence in Texas.

By kissing an angel good morning, Charley Pride ended up bringing an illegitimate son, Tyler Pride, into Charley Pride's life. A son that he had a relationship with - which ultimately prompted the Will contest to be filed in a Dallas probate court when the son was left out of the Will with allegations of undue influence and lack of capacity. *So, what are the chances of successfully contesting a Will in Texas?*

Texas Will contests usually fall into one or more categories; lack of mental capacity and/or undue influence are the two most common. In the Charley Pride Will contest, allegations of decades-long mental health issues surfaced with allegations of delusions, panic attacks, and manic depression. The allegations point to mental capacity issues that allegedly prevented Charley Pride from signing a valid Will. In addition, allegations of undue influence regarding finances and money were also asserted.

The Will contest lawsuit alleges breach of fiduciary duty, undue influence, and (undue) control on the part of Charley Pride's wife which also led to the Will contest. In addition, there are allegations against the wife for using persuasion and control to take advantage of Charley Pride's medical conditions and mental capacity issues. Simply put, the allegations in the Will contest are that Charley Pride did not have the testamentary capacity to sign a valid Will in Texas.

In a Will contest for undue influence, the elements of undue influence must be proven by a preponderance of the evidence.

The Will contestant must prove three elements:

1. The existence and exertion of an influence,
2. The effective operation of such influence to subvert or overpower the mind of the testator at the time of the Will's execution, and
3. That the testator executed a Will that he or she would not have executed but for the undue influence.

In a Texas Will contest for lack of testamentary capacity, the Will contestant must prove that the testator (person who signed the Will) was not of "sound mind". There is no specific standard to establish "sound mind". The Texas Supreme Court has held that the testator has testamentary capacity if he or she has sufficient mental ability at the time a Last Will and Testament is executed to:

1. Understand the business in which he or she is engaged, specifically the making of a Will;
2. Understand the effect of the testator's act in making a Will;
3. Understand the general nature and extent of the testator's property;
4. Know the testator's next of kin, the natural objects of the testator's bounty, and the claims upon the testator; and
5. Collect in the testator's mind the elements of the business to be transacted and hold them long enough to perceive their obvious relation to each other and to form a reasonable judgment as to them.

In a Will contest in Texas, there is a presumption that the testator possessed the necessary capacity at the time the Will was signed. If the above referenced test criteria are not satisfied, the Will can be found to be invalid. Learn more about [Will Contests](#).

Call our offices to learn more about Will contests and how to preorder our NEW book:
Your Roadmap to Estate and Probate Litigation in Texas

--- Question & Answer ---

Q

What makes a Will valid in Texas?

A

A Last Will and Testament must meet certain requirements in the State of Texas in order for it to be valid. Below are requirements that must be met when creating a Will in Texas:

Free will: No one can force you or anyone else to create a Will. Creating a Will has to be something you decide to do.

Sound mind: Another term used to describe "sound mind" is capacity. You must have the mental capacity to be able to create a valid Will. You have to have the ability to reason and make decisions.

Legal age: Of all the requirements of a Will, this one is the most straightforward. According to Texas law, if you want to draft a Will, you must be at least 18 years old, or married, or serving in the armed forces.

Signatures: A Will has to be signed by the person who is creating it. However, someone else at his or her instruction and in his or her presence can sign it.

Witnesses and Notary: A Will also has to be witnessed by two people, at least 14 years of age, in front of a notary. These witnesses must sign the Will and they must watch the creator of the Will sign it.

Keep these requirements in mind when signing your Last Will and Testament in order to protect your loved ones from the stress and cost of a possible Will Contest.

Meet the Team



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