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Russel J. Geist practices primarily in the Firm's trust and probate litigation department, handling cases concerning will, trust, and probate disputes. In addition, he works with clients to facilitate asset protection and business planning and corporate transactions. Russel and other attorneys at the Firm work closely with clients' trust and estate planning professionals to maximize clients' opportunities for successful resolution of disputes.

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WILL CONTESTS IN NEVADA

You've always enjoyed a loving relationship with your mother and she always said she would leave everything to you and your siblings. Following her death, however, you discover she had recently written a new will, leaving everything to a housekeeper or one of your siblings. Is there anything you can do? If you believe a loved one's will is not valid, you may be able to contest it. But proving a will is invalid is difficult. A will contest should be undertaken only if you are sure there is something wrong.

Standing to Contest a Will

One of the requirements for contesting a will is that you somehow have a connection to the will and feel harmed by its contents. You either have to be named in the will, but believe that you should have inherited differently, or weren't named in the will and should have been named in it or would have received money if the person had died without a will.

Additionally, you cannot contest a will solely because you think the distribution is unfair. In Nevada, a will can be contested only in circumstances where evidence exists showing something is wrong with the will. The following are situations where a will can be contested in Nevada:

"If you believe your loved one did not have the mental capacity to write the will, you can contest it."

Mental Incapacity

A will contest may be based on an allegation that the deceased person, or testator, wasn't of sound mind to make the decisions in the will. If you believe your loved one did not have the mental capacity to write the will, you can contest it. Typically, a statement from a licensed physician who examined your loved one around the time the will was written is the best evidence. Of course, testimony of friends, family, and neighbors is also highly relevant.

Undue Influence

A will can also be declared invalid if a court determines that it was procured by undue influence. This usually involves someone who occupies a position of trust – for example, a caregiver, housekeeper, or adult child – manipulating a vulnerable person (usually the elderly) to leave all, or most, of her property to the manipulator. If you believe another person exerted undue influence over your loved one and consequently induced your loved one to change the distribution under her will, you may contest the will based on undue

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influence. Generally, the person contesting the will has the burden of proving the manipulator exerted undue influence.

Fraud

The entire will or any part of it may be voided if it was created under fraudulent means. This could happen if the testator – the person making the will – is presented with false information that made the testator change her mind about to whom she intended to leave assets or property. For example, if Betty tells her grandfather that James, her brother, was arrested for stealing to get him to change his will (when James really wasn't a thief), she may have committed fraud. Fraud can also occur if someone has a testator sign a will without realizing the document was a will. There are numerous examples and scenarios when fraudulent schemes have been used to defraud rightful beneficiaries from their fair share under a will.

Not Executed or Witnessed Properly

A will may be invalid if it was not executed and witnessed properly. For example, in Nevada the witnesses cannot be people who are named to inherit property under the will. If a witness inherits, this will likely void the gift to the witness while leaving the remainder of the will intact. Thus, the signing of the will should always be witnessed by independent witnesses. Numerous conditions must exist to make a will valid under Nevada law.

If you successfully contest a will, the court may reinstate the testator's prior will. If there is no earlier will, the estate may pass under the state's intestate succession laws. Another alternative is for the court to invalidate only the portion of the will that is invalid, leaving the rest intact.

Nevada law recognizes other ways to challenge the distribution of property under a will. This may be by a claim against the trustee, personal representative, or agent under a power of attorney for a breach of fiduciary duty or by tortious interference with an inheritance. If you have any questions regarding a will, you should seek experienced legal counsel. The attorneys at Hutchison and Steffen are experienced in and effective at evaluating and pursuing vigorously a client's legal rights under a will. ■



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