

Reducing the Risk of a Will Contest

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Will contests are a nuisance to the deceased's heirs as well as to the drafting attorney. The risk of a will contest can be reduced by:

1. Developing Evidence of Capacity

If the client's mental status is a concern, consider obtaining a doctor's letter confirming that capacity exists. Also, consider videotaping the will execution ceremony, but only if you are convinced that the testator will appear clearly competent on video (many do not).

2. Using Non Testamentary Transfers

Transferring the bulk of the property outside of the will reduces the incentive to contest the will. Inter vivos gifts and multi-party accounts are more difficult to contest because the funds are often dissipated and difficult to trace.

3. Using Credible Witnesses

Secure long time friends of the testator and his or her family to serve as witnesses. Choose witnesses who are articulate and will be liked by a jury. It is also a plus if the witnesses are well respected by the potential will contestants.

4. Using Corporate Fiduciaries

If disinterested corporate fiduciaries serve in executor and trustee positions, conflicts with beneficiaries will be reduced. Disgruntled beneficiaries are less likely to challenge the actions of a neutral party as opposed to a disliked family member.

Will contests can never be completely eliminated, but the risk of a contest can be reduced with advance planning.



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