

Will Contest Time Frames and Deadlines

August 29, 2011 by Deirdre Wheatley-Liss



Over the past few years, more and more of our practice has become devoted to estate litigation. **These questions generally revolve around the validity of a decedent's Last Will and Testament, or gifts/transfers the decedent made prior to their death.** Typical situations might include a caregiver child taking mom to a lawyers office and having a new Will made out so that the house (mom's largest asset) is left only to the caregiver child, or grandma puts all of her accounts in joint name with the grandchild who comes over once a week to set up her medicine, or dad always planned to leave his assets to his kids, but then suddenly married his housekeeper and creates a new Will leaving everything to her. (Yes, these are sure you coming up on our all real life situations we have seen in our practice).

First and foremost, there is no right of inheritance in the New Jersey. Any person is free to leave their assets to whomever they want to, including in many states, their pets. A person can leave their assets

to charity, not giving anything to their family whatsoever. You can give more than one child than the other. you can skip over your children leave everything grandchildren. You can leave all of your assets to one person because they were when you took care of you. Just because you are related to somebody does not mean that you will share in their estate upon their death (with the exception of a spouse).

However, the manner is which you distribute your assets in the event of your death must be of your own free will. If the beneficiary that is now receiving more of the estate has either influenced the decedent, or the decedent created the new testamentary scheme when they had diminished capacity, then the new Will may not be a true reflection of the testator's intent - instead, it's reflection of the beneficiaries desires (see [Undue Influence in a Will Contest or Estate Administration](#)). It is to address these issues that the legal ground to contest a Will were created.

When a family members passes away, that there are concerns about the validity of their most recent Will, there are three key time frames to bear in mind:

- **10 days** - In New Jersey, a Will cannot be offered for probate until 10 days after the person passes away. During this time frame, a person with an interest in the estate may file a *caveat* with the Surrogate Court of the county where the decedent resided. The filing of the caveat will prevent the Surrogate from probating the Will through their administrative powers, and instead the Will must be formally admitted to probate before the Superior Court judge. This will give the challenging party time to retain legal counsel to file a formal brief outlining why the Will should not be admitted to probate.



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C O U N S E L L O R S A T L A W

- **4 months** – If the Will has already been admitted to probate, and you are a New Jersey resident, you have 4 months from the date that the Will was admitted to probate to file an action to overturn the Will. If you are a beneficiary of the estate, or next of kin, you should receive a Notice of Probate advising you as to the date that the Will was admitted to probate. Alternatively, you can contact the Circuit Court in the county in which the decedent resided to find out when the Will was admitted to probate. See [New Jersey Court Rule 4:85-1](#). This time frame may be extended in the case of newly discovered fraud.
- **6 months** - If the Will has already been admitted to probate, and you are not a New Jersey resident, you have 4 months from the date that the Will was admitted to probate to file an action to overturn the Will. See [New Jersey Court Rule 4:85-1](#). Again, this time frame may be extended in the case of newly discovered fraud.

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