



M2K Advisors



# Contesting a Will and Safeguard Measures

SUCCESSION PLANNING SERIES #19

# Contesting a Will



Contesting is the **process of disputing the validity of the last Will of the testator** on the basis that the Will does not reflect the actual intention of the testator.

It **can be contested by** the spouse, children, any person mentioned in the Will or by a person who believes he/she should have been a **beneficiary in the Will** made by the testator. A Will can be contested **only on valid legal grounds** and not merely because the person disagrees with it.

The Indian Succession Act confers **the right to file a caveat** (a notice, that certain actions may not be taken without informing the person who gave the notice) against the grant of a probate by any person having interest in the estate of the testator. This ensures that no proceeding for petition of probate or letter of administration will be initiated until a notice of the same is issued to the caveator.

Once a Will is challenged through filing of caveat, the **probate petition gets converted into a normal civil suit**, wherein the caveator is the defendant and the person who had previously applied for grant of probate (petitioner) becomes the plaintiff.



# Steps to Contest a Will



- 1** The case has to be registered with the appropriate civil jurisdictional court by filing of a suit.
- 2** A Vakalatnama has to be issued authorizing the lawyer to act on one's behalf.
- 3** The requisite amount of court fee has to be paid.
- 4** Once the case is accepted by the court, the court issues summons to the opposite party to appear before the court. It is the responsibility of the person who is contesting the Will to prove that the Will is invalid and doesn't represent the intention of the testator.
- 5** Subsequently various documents in support of contesting the Will has to be submitted to the court and the due process of hearing takes place.

# Grounds of contesting a Will and safeguard measures (1/2)

<b>Ground 1</b>	<p>The testator lacked the necessary mental capacity to draft and sign the Will</p> <p><b>Safeguard Measure:</b> A report from a medical practitioner can be obtained certifying the testamentary capacity of the testator and attached along with the Will.</p>
<b>Ground 2</b>	<p>The testator was under influence or coercion to draft the Will.</p> <p><b>Safeguard Measure:</b> The entire process of execution and attestation of Will could be video recorded. The recording can include the testator reading out the entire Will, executing the Will in the presence of the witnesses and witnesses signing the Will. The recording should contain a timestamp and to be kept along with the executed Will.</p>
<b>Ground 3</b>	<p>The testator intentionally left behind one of the natural heirs while drafting the Will as he was found to be errant.</p> <p><b>Safeguard Measure:</b> Such contentious bequests must be supported by an explanatory note stating the background and rationale for such exclusion.</p>



# Grounds of contesting a Will and safeguard measures (2/2)



The date of the Will and the date of signing are different.

Ground 4

**Safeguard Measure:** The presence of multiple dates in the Will is a cause for suspicion in the drafting of the Will. Hence it is suggested that signing date should be same as date of Will.

There are multiple Wills and there is confusion as to which Will prevails.

Ground 5







**Safeguard Measure:** The last Will should give reference to all previous Wills and specifically state that the aforementioned Wills are revoked

The Will is forged by someone after death.

Ground 6

**Safeguard Measure:** The Will should be registered to prove its authenticity. Further, the copies of the original Will can be given to all the beneficiaries / heirs after execution, so that the intention is clear beforehand.

# Other Common Safeguard measures

-  The Will should be registered at the office of relevant sub-registrar where the testator is residing.
-  Each page of Will should be signed by testator and minimum 2 witnesses
-  It is advisable that the beneficiaries to the Will do not act as witnesses / executor of the Will.
-  Avoid changes in handwriting, striking out, making interlineations, or overwriting in the Will. Hence, it is advisable to prepare the Will in a word document with the content being typed.
-  The original copy of the Will can be kept with trusted friend/ family member/ lawyer/ law firm.
-  The Will has to be updated on a time-to-time basis i.e., if the testator acquires new properties after the Will and the testator wishes to specifically bequeath it, the Will should be updated.



# Succession Knowledge Series



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2. [Types of Succession in India.](#)
3. [An Introduction to Hindu Succession Act](#)
4. [Rules of Intestate Succession Male - Part 1](#)
5. [Rules of Intestate Succession Male - Part 2](#)
6. [Illustrations on Intestate Succession for Male](#)
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