

by **Rebekah Sanfuentes**



How can a will be contested?

There are various ways in which a Will can be contested.

This article provides a summary of some of the most common reasons a claim against a deceased estate may be made.

1. To seek further provision

In the event that a person feels that the deceased failed to provide for them adequately under their Last Will and Testament, they can bring an application for further provision from the estate.

Such person must qualify as a spouse, child or dependant of the deceased to have standing to make such claim (based on Queensland estates. In other states of Australia the category of people who are able to bring such a claim varies).

2. To argue that the deceased lacked testamentary capacity

A Will can be overturned on the basis that the will maker did not have the requisite capacity to be able to understand the content of the Will that they executed.

In the event that a person is successful in their application to overturn a Will based on the deceased's lack of capacity, the deceased's previous Will is then the Will that becomes the valid Last Will and Testament. If the deceased did not have a previous Will, then the laws of intestacy would apply.

3. To argue that the deceased was unduly influenced

A person can seek to overturn a Will on the basis that the deceased signed their Will in a situation where they were forced or pressured to do so. In certain situations,



another person's presence in the room when the deceased signed their Will can in itself be held to be undue influence.

4. To uphold a 'deal' or promise of the deceased

The deceased may have entered into contractual obligations with a person during their lifetime that is not consistent with the terms of the Last Will. A person can seek to enforce such contract or promise and in effect alter the terms of the deceased's Last Will and Testament.

An example of such a claim would be when the deceased promises to leave a person specific property on their death in exchange for work or care during their lifetime.

McNamara & Associates have a team of Solicitors who practise exclusively in this area.

If you have lost a loved one and any of the above scenarios may apply to you, please do not hesitate to contact McNamara & Associates on **3816 9555** or by email to rsanfuentes@mcna.com.au to arrange a consultation to discuss.

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