

## **Five Things To Know When Contesting A Trust**

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What happens when you, as a beneficiary of a trust or will, discover your percentage of an inheritance was drastically decreased, or a new beneficiary suddenly appears in the “final” version of the trust document? You are mourning the loss of a loved one and now you have doubts about how the assets are being distributed so this is the last thing you want to think about. Just know that you are not alone and you have a right to contest a trust. Here are five things to consider when contesting a trust...

### **1. Fraud and Undue Influence**

One of the main factors in deciding whether to challenge the terms of a trust, an amendment, or the entirety of a trust, is whether there is any evidence of fraud or undue influence. Evidence of these acts comes in many forms. Some of the most egregious forms include:

- Convincing the trustor to sign a document they do not understand or intend to sign
- Isolating the trustor and alienating other family members
- Drafting trust amendments on behalf of the trustor, etc.

Generally, those who engage in fraud or undue influence do not leave a smoking gun or obvious evidence of their malicious acts. Additionally, proving fraud in court requires a showing of “clear and convincing” evidence that fraud took place. Undue influence requires a showing of excessive persuasion that causes another person to act or refrain from acting by overcoming that person’s free will.

Due to the elevated “clear and convincing” evidentiary standard for fraud, and the need to show “excessive persuasion” for undue influence, the more

evidence of these or other fraudulent acts, the stronger the case will be. In other words, it requires more than just suspicion and gossip to hold up as fraud or undue influence.



## 2. Lack of Capacity

Another distinct type of trust contest, which often times overlaps with fraud or undue influence, is a claim that the trustor lacked the mental capacity to execute the challenged trust or trust amendment. This claim is often associated with a healthcare provider's diagnosis of Alzheimer's, dementia or some other type of condition effecting one's mental function, however, the mere diagnosis of a mental disorder is not sufficient in and of itself to support a lack of capacity claim.

There are two different legal standards for evaluating mental capacity:

1. When a simple trust or will is at issue, the court will evaluate whether the individual understood the nature of the trust or will, the nature of his/her property, his relationships with heirs, and the presence of delusions or hallucinations.

2. If the trust document at issue is more complex, the elevated standard used to evaluate contracts is used analyzing a number of factors such as alertness, orientation, short and long term memory, recognition of familiar objects, the presence of delusions or hallucinations, the ability to modulate mood, among others.

The presence or absence of one or more of these factors does not automatically mean a person lacks mental capacity. It has to be shown that the person was suffering from, or lacked certain abilities, at or around the time the trust or trust amendment was executed.

## 3. Can You Challenge A Trust Document If You Were Written Out?

In order to challenge a trust document, a person must have legal standing to do so. For someone challenging the distribution of inheritance under a trust document, this means you need to be a beneficiary of the trust being challenged.

But what if a trust amendment disinherits you from the trust? Do you still have standing to challenge the trust based on fraud, undue influence or lack of capacity? The California Supreme Court recently decided you do.

In the case, *Barefoot v. Jennings*, which was decided by the California Supreme Court in January 2020, the Court held, "we conclude that claims that trust provisions or amendments are the product of incompetence, undue influence, or fraud, as is alleged here, should be decided by the probate court, if the invalidity of those provisions or amendments would render the challenger a beneficiary of the trust. [Citation omitted.] So when a plaintiff claims to be a rightful beneficiary of a trust if challenged amendments are deemed invalid, she has standing to petition the probate court under section 17200."

The California Supreme Court recognized the inequity that could result if a beneficiary was prohibited from challenging a trust based on an invalid trust

amendment obtained through fraud, undue influence or lack of capacity that disinherited an interested beneficiary. If this happened to you, the law is now settled allowing you to move forward with your claim to correct any injustice resulting from fraud, undue influence or lack of capacity.



#### **4. Don't Procrastinate**

A trust contest must be commenced within 120 days after a trust beneficiary receives notice of their inheritance from the trust, usually in the form of a letter stating the trustee is providing notice of the trust administration. If you believe fraud, undue influence or lack of capacity claims have effected your right to inheritance, it is important to consult with an inheritance dispute attorney soon after death.

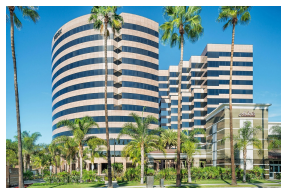
Once hired, your attorney will work with you to develop a strategy for the case. You may be advised to file the lawsuit right away and be the first one into the courthouse. Or, depending on the facts of the case, your inheritance dispute lawyer may recommend sending a letter to the attorney representing the person you are disputing with, a request for information. Depending upon the information you receive (or do not receive), you may decide to file suit.

In most instances, you have a limited time to contest the will and if you do not do so within that time frame you are barred from bringing an action.

#### **5. No Contest Clause**

Some trusts contain a "no contest clause." Under a no contest clause, if a beneficiary contests a trust, they must do so with "probable cause," although each no contest provision may be worded differently. If the person who challenges or contests the validity of a trust loses the lawsuit, and the judge believes that the suit was not brought with "probable cause," then the beneficiary could potentially forfeit some or all of their inheritance under the trust.

A trust is set up to hold ownership of property and assets, which then get distributed to heirs or beneficiaries upon death or the trustor becomes incapacitated. When this trust has been mismanaged, you have every right to consult with an inheritance dispute attorney, share your story, and fight for what was rightfully intended.



#### **We look forward to serving you & wish you the best**

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