

## Capacity to Make a Will

A [will](#) is a document made by a person, which states what is to be done with the person's property upon their death. Generally, a will leaves most of the testator's (the person making the will) property to close family members or friends, and sometimes to charitable organizations.

As one might imagine, how to distribute one's property after death is an important decision, and the law takes steps to ensure that these important decisions are only made knowingly and voluntarily by the testator.

Accordingly, for a will to be valid, the testator must meet several requirements: he must be an adult (over 18), he must be of sound mind, he must not be intoxicated when the will is made, and he must not be subject to any undue influence from other people.

### **Mental Capacity**

In order to make a valid will, the testator, obviously, must be sane enough to know what he's doing, *at the time the will is made*. This means that if they become completely insane after the will is made, the will is still valid.

In order to have sufficient mental capacity to make a will, the testator does not need to be particularly intelligent, or in perfect mental health. All that's required is that they understand that they're making a will, the nature and extent of their estate, and the "natural objects of their bounty" (they know who their close relatives are – the people to whom one could most reasonably expect the testator to leave most of his property).

If a person's mental capacity is so diminished that they are able to understand one or more of these things, they lack the capacity to make a valid will.

You should note that the testator's overall mental condition is not the only consideration. A testator may be perfectly sane, except for one thing: he suffers from an "insane delusion" as to a specific fact.

For example, suppose that the testator is perfectly sane in almost every context, but believes that his son is the living incarnation of Adolph Hitler, and based on that belief, leaves his son out of his will. Also assume that the testator has absolutely no factual basis for this belief – he just woke up one day absolutely convinced of it.

Obviously, his son would probably contest a provision in a will that specifically disinherited him, considering the fact that the father's belief is completely insane. If a court finds that any provision in the will was motivated by this belief, that provision will be invalidated. If the entire will was written based on the delusion, the whole thing is invalid.

Also, if the testator is temporarily insane, or heavily intoxicated, while making a will, the will is invalid for the same reasons.

## **Duress**

In order to be valid, a will must be a product of the testator's own volition.

So, if a will is made under duress (force or the threat of force), it is invalid. So, if you've ever seen a movie where somebody adds a provision to their will at gunpoint (presumably to the benefit of the person holding the gun), you should know that such tactics won't work.

There are many actions which can be considered duress, most of them far more subtle than putting a gun to somebody's head.

For example, suppose a person is in a nursing home, with very limited mobility, and depends on the assistance in caretakers to conduct many day-to-day tasks, including eating. Suppose that an employee of the nursing home withholds food from the resident until he changes his will to name the employee as a beneficiary.

Also, threatening to harm a close relative of the testator (a spouse, child, sibling, etc.) can also amount to duress.

If these facts became known, any provision in the will that resulted from this threat would be invalidated by a probate court.

## **Undue Influence**

This is a bit more [complicated](#) than duress, since it doesn't involve a threat of force or physical harm.

However, it's still possible, especially if the testator is in a vulnerable position, that outside pressure can induce someone to change their will in ways they otherwise would not have.

The pressure must actually overcome the testator's free will, and substitute his intent for the intent of the person exerting the pressure. This is most commonly found when the person suspected of undue influence is in a position of trust and power over the testator, such as a doctor, lawyer, or caretaker.

## **Fraud**

If somebody tells the testator a lie that motivates the testator to make a particular provision in a will, that provision will be invalid due to fraud.

For example, suppose a swindler knocks on the door of an elderly woman, claiming to be her long-lost son. She believes him, and based on this belief, changes her will. When it's found out that the swindler is not actually the woman's son, any gifts to him in the will must be invalidated.

### **Effects of an Invalid Will or Devise**

If a will is held to be invalid, the property named in it will pass as if the testator had died [without a will](#). Alternatively, if an invalid will purports to revoke an older will, the new will's invalidity might have the effect of reviving the previous will.

### **How Can A Lawyer Help?**

Having a lawyer help you with drafting your will every step of the way can greatly reduce the chances of a will being invalidated, for any reason.

Furthermore, if you are a beneficiary, or potential beneficiary in a will, you should hire a lawyer to assist you in the probate process, especially if you suspect that there is some issue with the testator's capacity that might invalidate the will.