

When I am speaking with potential clients or giving lectures on estate planning, there are several questions that come up more frequently than others. These questions can be fact specific, but a lot of them touch on general concerns, like the powers of an executor or who should serve as an agent through a Power of Attorney. While many know what can happen when you don't have a Will, clients are less certain about the outcome when a somewhat opposite scenario occurs: What happens when someone dies leaving multiple Wills?

When a person dies without a Will, the laws of intestacy kick in and provide rules for how that person's estate will be distributed. If a person does have a Will, the Will controls the distribution of assets. Many individuals who have Wills revise them over time, executing new Wills throughout their lives and potentially leaving several versions of their estate planning documents for relatives and friends to weed through when they are gone. So, which Will is valid and will be admitted to probate?

As a general rule, the Probate Court will admit the testator's most recent Will to probate. When a testator properly executes a Will, the testator revokes all of his or her prior Wills (hence the phrase "Last Will and Testament"). Typically, the new Will contains an express revocation clause along the lines of "I revoke all earlier Wills and Codicils." In Texas, the later-executed Will can also implicitly revoke the testator's prior Wills if it makes a complete disposition of the testator's property.

Problems can arise when multiple versions of a person's Will are submitted for probate. A Will can be challenged if it has not been properly executed, if there are allegations that one of the beneficiaries had undue influence over the testator, or if the testator was suffering from an insane delusion or did not have capacity when he or she executed the Will. Beneficiaries of an earlier Will can challenge the later-executed Will on any of these grounds, potentially leading to the invalidation of the later-executed Will regardless of the testator's true intent.

You can avoid confusion by destroying your old estate planning documents when you execute new ones. Writing "cancelled" or "void" on your old Will works, but it is best simply to shred or otherwise completely destroy the instrument. By doing so, you can save your loved ones time and, more importantly, the expense and emotional turmoil of a fight in probate court.