

When people in Texas create a will that they believe could make family members unhappy, they worry that the will could be challenged. The good news is that you don't have to worry about your being invalidated on the grounds that it is "unfair" to someone. However, there are a number of factors that can make your will invalid, so it is crucial to be aware of those factors and how to avoid potential problems.

Of course, a dedicated estate planning attorney can ensure that your will is set up to withstand any legal challenges, but if you're reviewing an existing will, it's helpful to understand factors that could be challenged.

### Basic Requirements Were Not Met

The easiest way to challenge the validity of a will is to demonstrate that the person who created the will failed to follow the basic requirements of Texas probate law. For starters, a will has to be in writing, so if you make a verbal promise to someone that they will receive property after your death, that promise is not enforceable at all.

A will must be signed either by the testator (the person who is establishing their will) or by someone acting for them in their presence. For instance, if the testator is unable to sign the will because of paralysis, they could instruct a family member to sign on their behalf. In addition to the signature requirement, the law also has a witness requirement. Two "credible" witnesses must sign in their own handwriting in the presence of the testator unless the will is "holographic," which means it is handwritten directly by the testator. Missing signatures often cause wills to be invalidated by the courts.

## There is Fraud Associated with the Creation of the Will

Another reason a will could be invalidated is that someone is able to prove that it was created fraudulently. For instance, one or more signatures might have been forged. Or someone could have presented the will to the testator to sign and given false information about what the will contained. The testator might have been told they were signing a new will just to change the executor only when, in fact, the new will change the terms of bequests as well. Dishonest representations can provide grounds for invalidating a will.

## Someone Exerted Undue Influence

Closely related to fraud is the concept of exerting “undue influence” on the person making bequests. Unscrupulous individuals frequently try to isolate older individuals from their family members and become their “only true friend” so that they become the object of trust. They encourage the testator to change bequests in their will to leave money to them or to a cause that they support. While this can be challenging to prove, when someone exerts undue influence on another person that affects the terms of their will, the use of that influence can provide grounds to challenge the validity of the will.

## The Testator Did Not Have the Legal Capacity to Execute a Will

A fourth reason that a will may be invalidated by the probate court is that someone is

able to prove that the testator did not have the legal capacity to establish a will at the time it was created. It could be that the testator was not old enough to legally sign the document, but in most cases, the issue is that the testator lacked the mental capacity to understand what they were doing when creating or changing their will.

This is one reason it is vitally important to prepare wills and other estate planning documents long before you expect to need these documents. An accident or illness could put even a young, healthy adult into a coma and make them incapable of creating legal instructions, so it is best to be prepared ahead of time just in case.

## The Nordhaus Firm Can Help You Avoid Potential Problems with a Will and Guide You Through Probate

Whether you need to create or change a will or it is time to have a loved one's will probated, the compassionate team at The Nordhaus Firm is ready to assist. We can review existing documents to see whether updates should be made or create new documents from scratch to ensure that your family is prepared for whatever the future may bring.

If a loved one has passed away, we can guide you step by step through the Texas probate process, handling many matters directly on your behalf so that you can avoid worry and focus on family during this difficult time.

For a free consultation to discuss the ways we may be able to help, call us at 214-726-1450 or contact us online now.