

# Common Causes of Action in Estate Litigation



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# Common Causes of Action in Estate Litigation

1. **Lack of Capacity** — Under the law, a testator is required to have mental competency to make a last will and testament or trust and to understand the nature of his or her estate assets and the people to whom the estate assets are going to be distributed. A will or trust can be declared void if lack of capacity can be proven. Usually, incompetence is established through a prior medical diagnosis of dementia, senility, Alzheimer's or psychosis.
2. **Undue Influence** — When the testator is compelled or coerced to execute a will or trust as a result of improper pressure exerted on him or her by a relative, friend, trusted advisor, or health care worker, a cause of action arises. In many cases, the undue influencer will upset a long established estate plan where the bulk of the estate was to pass to the descendants or close relatives of the decedent. In other cases, one child of the decedent will coerce the decedent to write the other children out of the will or trust.
3. **Lack of Formalities** — Proper execution of a last will and testament or trust requires that the will or trust be signed by the testator and witnessed and signed by two unrelated parties. A last will and testament can be contested on the basis that it was not properly drafted, signed, or witnessed in accordance with the law.
4. **Breach of Fiduciary Duty** — The personal representative of an estate or the trustee of a trust owes the beneficiaries of the estate or trust certain fiduciary duties of honesty, prudence and loyalty. When those duties are violated by a trustee or personal representative, a cause of action arises.
5. **Elective Share** — Some states provide an elective share to surviving spouse, which provides the surviving spouse with a portion of the deceased spouse's estate according to a statutory formula. Deadlines may be associated to make the elective share.
6. **Forged Documents** — Documents can be forged to create unintentional outcomes with the intent to deceive. When documents appear altered or falsified, a cause of action arises.

**To arrange for a complimentary consultation,  
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