

What to Expect When the Will is Unexpected

ARTICLE SERIES | Part 2

When Probate Goes Wrong

Imagine that someone in your family has passed away, and it is up to you to navigate the probate and estate process to carry out their final wishes...

This could be complicated by a variety of factors, such as the size and nature of their assets, the number of parties involved, and even how well those parties get along. It can be made more difficult still by the fact that your family is already in a state of mourning. However, beginning with the end goal in mind and a basic understanding of the process can help you to weather the sometimes-turbulent seas of probate.

While individual situations make it impossible to predict everything you might end up facing during the probate process, there are several legal actions that you or

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someone else might initiate when probate goes wrong. Some of the more common ones include:

- **Will Contests**
 - Claims involving decedent's intent
 - Claims involving decedent's testamentary capacity
 - Claims involving undue influence of decedent
- **Declaratory Judgments**
- **Breach of Fiduciary Duty**
- **Accounting**
- **Fraud**
- **Conversion**
- **Concealment of Assets**
- **Estate Administration Disputes**
 - Exceptions to Inventory
 - Objections to Accounting

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First, someone may file a Will contest and claim that the Will is invalid. The Will contest may include claims involving the decedent's intent, such as those involving testamentary capacity (legal and mental ability to make a will), undue influence, or fraud. Even when the Will is deemed valid, there may still be disagreements about its meaning. In that case, someone may file a Declaratory Judgment asking the Court to interpret, or "construe," the Will.

In addition to actions involving the Will, there are other claims that may be brought during the probate process. Someone may file a claim for breach of fiduciary duty, claiming the executor failed to uphold their duties to the beneficiaries of the estate. If someone suspects that the decedent's assets were mishandled—during or after their lifetime—they might make a claim of fraud, conversion, or concealment of assets. A fiduciary may then be required to provide an accounting of their activities in relation to the decedent's assets.

During the estate administration, disputes may also arise. A beneficiary may disagree with which assets have gone to probate or how those assets are valued, in which case they would file an exception to the inventory. Similarly, a beneficiary may disagree with an executor's accounting of their administration and may file an objection to that account.

Now, this is just a small introduction to some of the major obstacles you can encounter in the probate process. There is still a lot to cover, and we will go into more detail as this series unfolds. However, remember—you do not have to go through the probate process alone.

You might seek an attorney's help as you navigate the court system and hire an accountant, local realtor, and/or financial planner to provide specialized knowledge. Help is available to alleviate stress and ensure that your loved one's wishes are carried out to the letter.

Stay tuned for our more in-depth discussion of Will contests, coming soon.



Attorney Spotlight

Looking for help with a loved one's estate?

Aanchal Sharma and Nicholas Vento have years of experience guiding clients through probate.



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