What is a Will?

A Will is a legal document under which an individual designates the persons (or charities) that are to receive the deceased individual's "probate" assets upon his or her death. The Will also appoints a person or entity to act as the Personal Representative, with authority to settle the decedent's affairs and distribute the probate assets to the individuals named in the Will. The creator of the Will is known as the "Testator," and the beneficiaries of the Will are called "devisees." Some common examples of probate assets include: (i) real estate that is titled solely in the decedent's name or owned by the decedent as a tenant in common; (ii) bank accounts titled solely in the decedent's name; (iii) personal property, such as jewelry, furniture, collectibles, photographs, electronics, etc.; or (iv) any life insurance policies, retirement accounts or brokerage accounts with no beneficiary designation.

How Do Wills Work?

When an individual dies, his or her Will must be deposited with the probate court located in the Michigan county in which the decedent last resided. If there are probate assets, the Will must also be admitted to probate by the probate court before assets may pass to the devisees. In some instances, the administration of the deceased individual's Will, the administration of the probate estate, and the distribution of the decedent's assets proceed without any significant problems or issues; however, in certain circumstances, people are surprised to discover that a loved one or family member did not provide for them in their Will as they had expected. This usually arises when the decedent provides a substantial amount of assets to one child to the detriment of other children, disinherited certain individuals or deviated significantly from prior Wills executed throughout the decedent's lifetime. These drastic changes often times occur later in a person's life, usually when they are elderly and vulnerable. In some cases, family members or others close to the person will notice changes in the person's mood, personality or cognitive functions. They might also notice someone taking control of the person's health care and financial decisions, or isolating the person from other family members and friends.

What is a Will Contest?

Family members and loved ones are not left without recourse. Legal action can be taken to contest the Will. Contesting a Will means requesting that the probate court deem the Will invalid. To contest the Will, the challenger must have standing and valid grounds to do so. In other words, only certain parties may challenge the Will and the reason for the challenge must be recognized under Michigan law.

Persons with standing to challenge a Will generally include heirs of the decedent, devisees under the Will, devisees under a prior Will, and nominated or incumbent fiduciaries of the estate or trust. The decedent's heirs are those individuals who would have received the decedent's probate property had the decedent died without a Will.

The probate courts give great deference to the Testator's wishes as to the disposition of his or her property in the Will. The probate court will not invalidate a Will merely because a particular individual was disinherited or the distributions were unfair or disproportionate. Instead, challengers must prove that the Will is invalid for reasons recognized by Michigan law. Some of the most common grounds for contesting a Will are as follows:

- The existence of a later executed Will, Codicil or Revocation
- The Will was not created in accordance with the formal requirements set forth under Michigan law (e.g. the Will was improperly signed or witnessed)
- The Testator of the Will lacked the necessary requisite testamentary capacity to establish the Will at the time of execution (e.g., the Testator was not mentally sound at the time the Will was signed)
- The Will was a result of "Undue Influence" by a third party (e.g., the Testator was pressured or forced into signing the Will through the acts of a third party)
- The creation of the Will was induced by fraud or misrepresentation (e.g., the Testator did not realize he or she was signing a Will, or was tricked into signing the Will)
- Forgery
- The creation of the Will was induced by coercion or duress (e.g., the Testator was threatened with physical or financial harm)
- The creation of the Will was the result of mistake of fact

What is the Legal Process to Contest a Will?

An action to contest a Will is initiated by filing Objections to the admission of the Will in the appropriate probate court. The Objections must set forth the factual and legal issues supporting the challenge. The challenger must be mindful of the time limitations placed on contesting a Will. If the Will is admitted by an informal proceeding (by "application"), there is no statute of limitations for contesting the Will; however, a challenger may be prevented from contesting the Will due to an unreasonable delay in bringing the claim. If a Will is admitted by formal proceeding (by "petition"), the challenger must raise his or her claims by filing Objections prior to the admission of the Will. Once a formal order of testacy is entered and the appeal period (21 days) has
expired, the challenger is barred from contesting the Will, except in very limited circumstances. If an individual has standing, the facts and circumstances warrant a challenge and the time frame for contesting the Will has not expired, the potential challenger should consider retaining an experienced probate litigator to perform initial due diligence to determine the validity of the claims.

Contesting a Will is a complex and difficult process. Probate litigation can be costly, time consuming and emotionally exhausting. The assistance of an experienced attorney is essential in order to provide you with the guidance, advice and expertise required to contest a Will in probate court. For a consultation with a Clark Hill attorney regarding a probate litigation matter, please call Thomas E.F. Fabbri at (248) 988-5856, Mallory A. Kallabat at (248) 530-6342, Jonathan M. Martone at (248) 988-1823, or Nicholas E. Papasifakis at (248) 530-9132. For more information on probate related litigation matters, please visit our website at clarkhill.com.

Specifically, assets may pass: (i) by an outright gift; (ii) by operation of law in a joint ownership arrangement (i.e. a joint bank account or a joint tenants with rights of survivorship with respect to real property); (iii) by contract (i.e. a beneficiary named on a life insurance policy or payable on death provisions in a brokerage account); (iv) pursuant to the dispositive terms of a trust agreement; (v) pursuant to the dispositive terms in a Last Will and Testament; (vi) pursuant to a Deed; or (vii) in accordance with Michigan intestacy laws if none of the other options are utilized.

The venue in which the proponent of the Will has sought its admission; otherwise, in the county in which the decedent last resided.