

# 'They Can Change My Will After I'm Gone? Really?'

What you should know about a new Florida law that permits post-death changes to wills.

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Effective immediately, the state of Florida permits a person's "last will" to be changed, or altered, even after a person dies.

This will come as a shock to most people. Some people believe that when you draft your will, the document is inviolate: "It says what it says, and it means what it means, and it may never be changed after your death."

Florida law has just changed that.

Effective July 1, 2011, Florida has joined the growing trend of states and legal scholars who believe that the last will of a decedent may be altered after the death of the decedent.

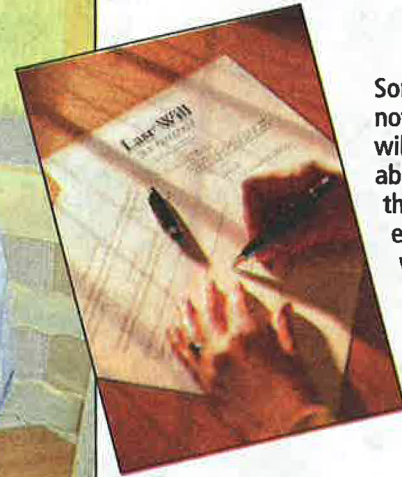
Florida now permits the "reformation" of a will due to a mistake of law or fact. This new legislation, Florida Statute Section 732.615, while clearly progressive, and aligned with the national trend, is also historic and unprecedented.

Stated simply, or perhaps most commonly, someone who does not "take" under a will may now be able to inherit under that will if they can establish that the will, or a provision of the will, was the product of a mistake.

What does that mean?

A common, recurring example might be the following: Mother has two adult children and chooses to leave her entire estate under her will to one child. Upon Mother's death, the other, disinherited adult child files a lawsuit seeking to "reform," or change, the will. The disinherited adult child argues that a mistake of fact exists. The mistake is that Mother disinherited the adult child based upon an in-

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correct assumption about the child — for instance, "the child never loved me."

Another common example might be when a parent divorces and then remarries a second spouse. The parent drafts a will, which leaves the parent's entire estate to the second spouse, at a time when the parent has little money or few assets. Some years later, the parent dies. However, by the time of death, the parent's net worth has increased substantially. The parent's adult children are entirely disinherited, and the entire estate "goes" to the second spouse.

Under the new law, the disinherited adult children may seek to reform the parent's will and to have themselves inserted as beneficiaries if they can do two things.

First, they must establish that their disinheritance was due to a mistake of law or fact. The second thing they must do is prove this by "clear and convincing evidence." This is a different burden of proof than most civil cases in Florida; however, it is less burdensome than the "beyond a reasonable doubt" proof required in criminal cases.

Whether someone will be successful in reforming a will depends on the very specific facts involved and the mistakes of fact or law which were, or were not, alleged to have occurred.

While this law may leave many clients uncomfortable with the thought that their wills may be subject to attack after their deaths, it will likewise cause at least some uncertainty. However, a couple

things are very certain.

First, the judges of our probate courts have been granted an awesome power, and the great discretion, to correct wrongs in a person's will, and to provide an inheritance to those who may have not received what the decedent intended them to receive. Simply put, courts may rewrite wills after you are gone, albeit within legal guidelines.

Second, this new procedure and law provide a process to correct a mistake, but it does not come without risk. If a party seeks to reform a will and is not successful, he or she will have to pay attorney's fees and costs.

What does this all mean to you? You should carefully draft your wills, or trusts, with a competent estate planning attorney, keeping in mind that even after you're gone, what you put down in writing may still be changed. If you are disinheriting someone, or believe that your will may be challenged when you are gone, address this now with your attorney.



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