**What is Testamentary Capacity?**

When planning an estate, many people are confronted for the first time with the phrase “testamentary capacity,” which is a legal term that refers to a person’s mental capacity to draft a will or create a trust. If a court finds that a person lacked testamentary capacity, then it will invalidate any will that the individual drafted. Generally, courts presume that a person has testamentary capacity. However, it is possible to have a will thrown out based on a lack of testamentary capacity, although doing so requires proof that a testator did not have a full understanding of the consequences of creating a will, which can be a difficult standard to meet. If you have concerns about a loved one’s will or want to ensure that your own estate plan is not contested, please contact a member of our [contested estates legal team](http://orlowskywilson.com/areas-of-law/estate-planning-services/contested-estates/) for advice on how to proceed.

**What is Required to Prove a Lack of Capacity?**

In order to defeat a claim that a testator lacked [testamentary capacity](http://www.ilga.gov/legislation/ilcs/ilcs4.asp?ActID=2104&ChapterID=60&SeqStart=5300000&SeqEnd=6800000) to dispose of his or her estate, there must be evidence that the individual had the mental ability to:

* Know and remember the identities of the natural beneficiaries of the will;
* Dispose of his or her property according to a specific plan; and
* Comprehend the kind and character of the assets and property being distributed.

Probate courts automatically presume that testators are of sound mind until contrary evidence is provided by the party contesting the will. Examples of evidence that could convince a court that a testator lacked testamentary capacity include:

* Proof of physical impairment or disease;
* Evidence that a guardian was appointed for the testator;
* Evidence that the testator suffered from delusions or hallucinations;
* Proof that the testator was unable to conduct his or her ordinary business affairs;
* Proof that a testator suffered from an addiction to drugs or alcohol; and
* Evidence of psychosis or neurosis.

No single piece of evidence is considered conclusive in these types of cases. Instead, courts will consider a variety of factors and pieces of evidence before coming to a conclusion based on the totality of the circumstances. Furthermore, all evidence of a lack of testamentary capacity must relate to a time at or near the time [when the will was executed](http://www.illinoiscourts.gov/CircuitCourt/CivilJuryInstructions/200.00.pdf). This means that just because a testator lacked capacity at the time of his or death does not mean that his or her will or trust will automatically be invalidated. As long as the testator had the mental capacity to create a will at the time it was witnessed and signed, a contest based on a lack of testamentary capacity will fail.

**The Legal Representation You Deserve**

If you believe that a loved one lacks the capacity to create a will or have concerns that your own relatives may attempt to have your will invalidated after your death, please call [Orlowsky & Wilson, Ltd. Attorneys at Law](http://orlowskywilson.com/contact-us/) at 847-325-5559 to schedule an initial consultation with a dedicated and compassionate Skokie contested estates attorney who can address your questions and concerns.