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# Drafting lawyers have a responsibility to investigate will revisions



When a client wants to make a significant change to his or her existing estate plan, there is an obligation on the part of the drafting lawyer to investigate why the change is being made, says Toronto-area estates litigation lawyer [Charles Ticker](#).

Failure to do so could give legs to a will challenge later down the road, Ticker tells [AdvocateDaily.com](#).

"Let's say there's an earlier will where children have been treated equally and then there's a will made which changes that and excludes or reduces the gift. Obviously the beneficiary who has been negatively affected in the revised will may try and challenge it," he says. "If they were treated better under an earlier will, they may try and get that will reinstated."

When a drafting lawyer is taking instructions, it is important to keep an eye out for red flags, but at the same time honour the testator's wishes.

"You can say to a client, 'In an earlier will you treated everyone equally, why the change?'" Ticker says. "The drafting lawyer should really drill down and get into the specifics. If you're not getting clear feedback on that, then there may be a problem."

Ticker suggests starting with open-ended questions about the relationship between the testator and the negatively affected beneficiary. He says to look for any indicies of undue influence that should be further explored.

"Is there another sibling who is living with the parent? Is there another sibling who brought the parent to a meeting? Is there a second marriage or subsequent relationship where they may indicate a predatory marriage situation?" he says.

"I think any time that there seems to be a significant change from a previous estate plan, which is going to affect someone, then I think the lawyer has a responsibility to be truly satisfied that the testator has testamentary capacity," Ticker says.

"Of course, the drafting lawyer does not have the final say on testamentary capacity, but clearly he or she has to be satisfied that their client has that capacity before they draft the document."

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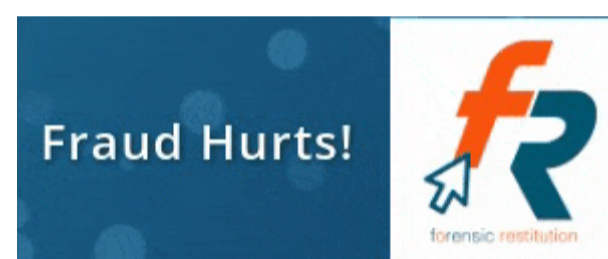
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