

Videotaping your will signing may not produce the desired outcome

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Some people make video recordings of their will signings in an effort to create evidence that they possess the requisite testamentary capacity. For some, this strategy may help stave off a will contest. But in most cases, the risk that the recording will provide ammunition to someone who wishes to challenge the will outweighs the potential benefits.

Assessing the downsides

Unless the person signing the will delivers a flawless, natural performance, a challenger will pounce on the slightest hesitation, apparent discomfort or momentary confusion as “proof” that the person lacked testamentary capacity. Even the sharpest among us occasionally forgets facts or mixes up our children’s or grandchildren’s names. And discomfort or nervousness with the recording process can easily be mistaken for confusion or duress.

You’re probably thinking, “Why can’t we just re-record portions of the video that don’t look good?” The problem with this approach is that a challenger’s attorney will likely ask how much editing was done and how many “takes” were used in the video and cite that as further evidence of lack of testamentary capacity.

Implementing alternative strategies

For most people, other strategies for avoiding a will contest are preferable to recording the will signing. These include having a medical practitioner examine you and attest to your capacity immediately before the signing. It can also involve choosing reliable witnesses, including a “no contest clause” in your will, and using a funded revocable trust, which avoids probate and, accordingly, is more difficult and expensive to challenge. If you’d like more information on estate planning strategies, please contact us.

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