

THE
NATIONAL LAW REVIEW

Challenging a Previously Concealed Will

Monday, March 12, 2018

In general, the time to contest a Last Will and Testament is very short. An in-state resident who is aware of the notice of probate will have four months to challenge a Will from the time it is submitted to probate. On the other hand, an out of state resident would have six months to challenge a Last Will and Testament once it is admitted to probate.

Recently, the Appellate Division determined whether a person could contest a Last Will and Testament which had been concealed by the Defendant for over 8 years. In this matter, the Court addressed the Court Rule which requires that a Will contest be commenced in the abbreviated time period set forth above.

In ruling in favor of Plaintiffs, the Court explained that Defendant's argument that the challenge to the Will was time barred lacked merit. The fact that Defendant herself knowingly concealed the Will from the other parties who filed the lawsuit resulted in the Statute of Limitations being tolled on behalf of Plaintiffs until such time as the Last Will and Testament was discovered.

The Court found that Plaintiffs' failure to bring the action within four to six months was not barred due to the willful concealment of the Last Will and Testament by Defendants.

As such, Defendant's attempt to conceal the Last Will and Testament, and thereafter, to admit it to probate after the statutory period was unsuccessful.

The Plaintiffs challenged the Last Will and Testament and were successful in overturning it due to numerous factors. Most importantly, however, is the Court's decision that it will toll the Statute of Limitations to file an action to contest a Will if there is willful concealment by a party who benefits by the Will, or the Executor of the Estate.

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