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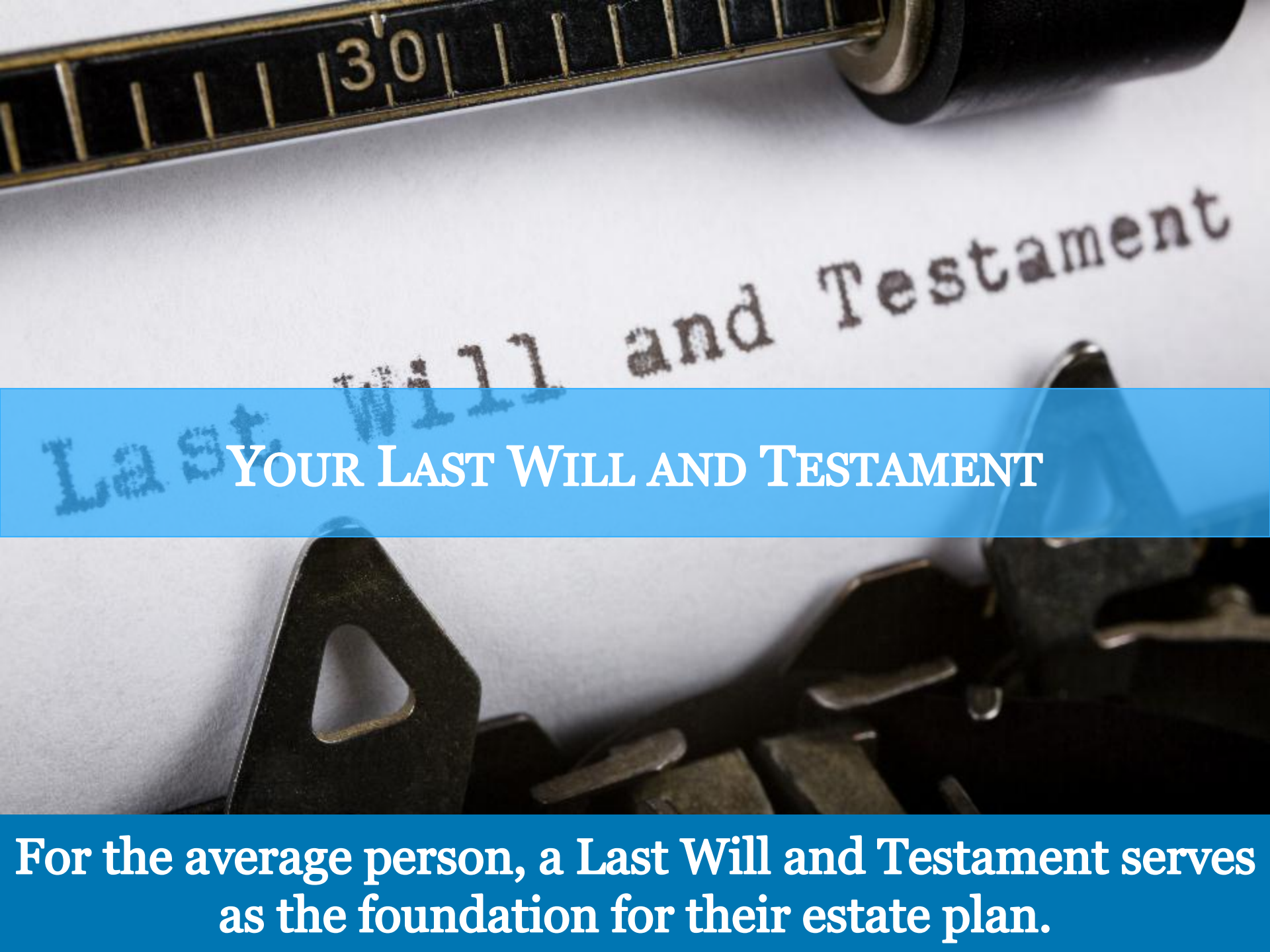
Last Will

(((and)))

Testament

CONTESTING A WILL

In North Carolina



YOUR LAST WILL AND TESTAMENT

For the average person, a Last Will and Testament serves as the foundation for their estate plan.

Sometimes, a Will is the *entire* estate plan, completely providing for the distribution of all estate assets.

IF YOU RECENTLY LOST A LOVED ONE...

If you recently lost a loved one, the decedent's Will has been, or will be, submitted to the appropriate probate court to get the probate process started.

Probate is required for several reasons:

**To allow the assets of the decedent to be identified,
located, and valued.**

**To give creditors of the estate the opportunity to file
claims against the estate.**

To make sure any taxes owed to Uncle Sam or any other taxing authorities are paid.

To ensure that the remaining estate assets are legally transferred to the intended beneficiaries and/or heirs of the estate.

A man with dark hair and glasses, wearing a light-colored, textured button-down shirt, is looking down at a stack of papers he is holding in his hands. He has a serious expression. The background is a blurred indoor setting with a window showing a building outside.

ARE YOU ENTITLED TO CONTEST THE WILL?

In the State of North Carolina, any “interested person” may contest a Will.

An “interested person” is defined as someone who has a pecuniary or beneficial interest in the estate that is detrimentally affected by the Will, which may include:

Beneficiaries under the current Will


Beneficiaries of a previous Will

Legal heirs under the state's intestate succession laws

Creditors of the estate

IS THERE A DEADLINE FOR CONTESTING A WILL?

Yes. Except under special circumstances, you must file a Will contest, referred to as a “caveat to the Will” in North Carolina, within **three years of the application to probate.**

A close-up photograph of a person's hands writing on a document. The person is wearing a light blue button-down shirt. They are holding a dark blue pen with a silver clip. The document is white and has some faint text on it. The background is blurred. A blue horizontal banner is overlaid across the middle of the image, containing white text.

WHAT GROUNDS MAY BE USED TO CONTEST A WILL?

Contrary to popular belief, simply being unhappy with the inheritance you were left (or lack thereof) is not a sufficient legal ground for contesting a Will.

In the State of North Carolina, you must allege one of the following grounds when you file a Will contest:

Lack of testamentary capacity –
testamentary capacity refers to the ability to understand the extent and value of your assets, who would receive those assets after death, and what a Will is and the effect of executing that Will.

Undue Influence – this refers to a situation where a beneficiary had the ability to exert influence on the Testator and the resulting Will shows that influence.

Fraud – refers to a situation wherein an individual made a misrepresentation to the testator or concealed an important fact from the testator that he or she had a duty to disclose.

WHAT HAPPENS WHEN A WILL IS CHALLENGED?

The presumption is that the Will submitted to probate is valid.

The person challenging the Will must prove it is invalid.

When a “caveat to the Will” is filed, the probate process effectively comes to a halt while the challenge is litigated because the outcome determines what happens next.

THE OUTCOME – WHAT HAPPENS NEXT?

The outcome of the Will contest determines how the estate is probated.

If the challenge is **successful**, the Will is declared invalid and the court will look for another valid Will. If none is located, the North Carolina intestate succession laws will be used to probate the estate.

If the challenge is unsuccessful, the Will remains valid and it is used to probate the estate.



WHAT IF THE WILL HAS A “NO CONTEST” CLAUSE?

A “no contest” clause, formally known as an “In Terrorem” clause, is a provision in a Will intended to prevent challenges to the Will.

Typically, it provides that if a beneficiary challenges the Will and loses, he/she will not receive the inheritance to which he/she was entitled under the terms of the Will.

For example, you might be entitled to \$100,000 under the terms of your grandfather's Will; however, the "no contest" clause means that if you challenge the Will and lose, you receive nothing.

North Carolina will uphold no contest clauses; however, if a challenge is brought in good faith the no contest clause will not apply, meaning you will still receive your inheritance even if you lose the challenge as long as your challenge was brought in good faith.

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