

CHAPTER 137 - CONTESTS OF WILLS

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BEFORE PROBATE

SECTION 137.010 Proceedings preliminary to trial.

1. Any interested person, including a devisee under a former will, may contest the will by filing written grounds of opposition to the probate thereof at any time before the hearing of the petition for probate. Personal notice must then be given by a citation directed to the heirs of the decedent and to all interested persons, including minors and incapacitated persons, wherever residing, directing them to plead to the contest within 30 days after service of the citation in the manner provided in [SECTION 155.050](#).

2. A person so served may interpose any defense or objection to the contest by any motion authorized by the Nevada Rules of Civil Procedure in civil actions. If the motion is granted, the court may allow the contestant 10 days within which to amend the contest. If the motion is denied, the petitioner and other interested persons, within 10 days after the receipt of written notice thereof, may jointly or separately answer the contest. The times specified in this section may be extended by the court.

SECTION 137.020 Trial of contest: Jury; costs.

1. In the contest, the contestant is plaintiff and the petitioner is defendant. The written grounds of opposition constitute a pleading and are subject to the same rules governing pleadings as in the case of a complaint in a civil action.

2. An issue of fact involving the competency of the decedent to make a will, the freedom of the decedent at the time of the execution of the will from duress, menace, fraud or undue influence, the due execution and attestation of the will, or any other question substantially affecting the validity of the will, must be tried by the court unless one of the parties demands a jury. The party demanding the jury shall advance the jury costs.

3. Upon the determination of the contest, costs must be awarded in accordance with the provisions of [chapter 18](#) of the Nevada Revised Statutes.

SECTION 137.030 Admissibility of testimony concerning declarations of testator. In the contest, the testimony as to the declaration of a testator is admissible if contemporaneous with the execution of the will insofar as the

declaration relates to the testator's intention, state of mind, feelings, competency, and the existence or nonexistence of duress and undue influence.

SECTION 137.040 Evidence of execution. If the will is contested, all the subscribing witnesses who are present in the area and who are of sound mind must be produced and examined, or the death, absence or incapacity of any of them must be satisfactorily shown to the court. If none of the subscribing witnesses resides in the area, and the evidence of none of them can be produced, the court may admit the evidence of other witnesses to prove the due execution of the will and, as evidence of the execution, it may admit proof of the handwriting of the testator and of any of the subscribing witnesses.

SECTION 137.050 Verdict and judgment. The jury must return a special verdict upon the issues submitted to them by the court; and upon the verdict, or upon the proof taken if a jury is waived, the court must render judgment, either admitting the will to probate or rejecting it.

SECTION 137.060 Order admitting will to probate. If the court is satisfied upon the proof taken when heard by the court, or by the verdict of a jury if a jury is had, that the will was duly executed by the testator, who was at the time of sound and disposing mind and not under duress, menace, undue influence or fraudulent representation, the court, by order in writing, shall admit the will to probate.

SECTION 137.070 Perpetuation of testimony. The testimony of each subscribing witness who has testified must be reduced to writing, signed in the form of an affidavit or deposition and filed with the court, and is admissible in evidence in any subsequent contest of the will if the witness has died.

AFTER PROBATE

SECTION 137.080 Persons qualified to contest will; filing of petition. After a will has been admitted to probate, any interested person other than a party to a contest before probate or a person who had actual notice of the previous contest in time to have joined therein may, at any time within 3 months after the order is entered admitting the will to probate, contest the admission or the validity of the will. The contestant must file with the court in which the will was proved a petition containing the allegations of the contestant against the validity of the will or against the sufficiency of the proof, and requesting that the probate be revoked.

SECTION 137.090 Issuance of citation. Upon filing the petition, and within the time allowed for filing the petition, a citation must be issued, directed to the personal representative and to all the devisees mentioned in the will, and the heirs, so far as known to the petitioner, including minors and incapacitated persons, or the personal representative of any such person who is dead, directing them to plead to the contest within 30 days after service of the citation.

SECTION 137.100 Service of citation; trial; revocation of letters. The citation must be served and proceedings had thereunder as in the case of a contest before probate. If the jury finds or the court decides that the will is invalid or is not the last will of the testator, the court shall enter an order revoking the probate of the will and letters testamentary. Thereupon the powers of the personal representative cease, but the personal representative is not liable for any act done in good faith before the revocation.

SECTION 137.110 Costs. If the probate is not revoked, the costs of trial must be paid by the contestant. If the probate is revoked, the costs must be paid by the party who resisted the revocation or out of the property of the decedent, as the court may direct in accordance with the provisions of [chapter 18](#) of the Nevada Revised Statutes.

SECTION 137.120 Period of limitation. If no person contests the validity of a will or of the probate thereof, within the time specified in [SECTION 137.080](#), the probate of the will is conclusive.

SECTION 137.130 Probate of other will. Failure to contest a will does not preclude the subsequent probate of a will executed later in point of time than the one previously admitted to probate.

SECTION 137.140 Appeal from final order. An appeal from a final order determining the contest of a will is governed by the Inter Tribal Appellate Court, and the notice of appeal must be filed with the clerk of the appellate court not later than 30 days after the date of service of written notice of entry of a final order. A party may make any motion after the determination that is provided by the Nevada Rules of Civil Procedure.