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Wills, Trusts, and Estates for
Legal Assistants

Sixth Edition



Chapter 8

REVOCATION OF WILLS

Chapter Objectives

- Identify situations in which a will is revoked by operation of law
- Explain how a will can be revoked by a physical act
- Describe the kinds of subsequent writings that operate to revoke a will
- Analyze the conditions under which a presumption of revocation operates
- Discuss the circumstances in which a revoked will may be revived

Categories of Revocation

- Operation of law
- Physical act
- Subsequent writing

Circumstances that Trigger a Revocation by Operation of Law

- Marriage of testator - *allows for force share in most states*
- Divorce of testator - *provision for spouse void in most states if Will written during marriage*
- Pretermitted heirs - *provisions for inadvertent omission*
- Death of beneficiary - *revokes if death before testator and not covered by anti-lapse statute*



Additional Circumstances that May Trigger Revocation

- Beneficiary killed testator - *cannot inherit! Bad strategy*
- Alienation - *if gifted during lifetime, cannot gift by Will*
- Elapse of time - *Will distributes exactly as written; make sure your Will provisions are up to date with value of your estate*
- Change in feelings toward beneficiary - *Will not affect distribution as written in Will. If you want it different, make a new Will or Codicil*

Revocation by Physical Act

- Capacity
- Intent
- Physical act
- Simultaneous existence of elements

Physical Acts of Revocation

- Burning
- Tearing
- Canceling
- Obliterating
- Destroying

Physical Revocation by Proxy

- Act at testator's direction
- Act in testator's conscious presence

Revocation by Subsequent Writing

- New will
- Codicil
- Document of revocation
- Express Revocation: A statement in a later will expressly revoking a prior will.

Revocation by Inconsistency

- Provisions in an earlier document are revoked by inconsistent provisions in a later document.
- But provisions in earlier document that do not conflict with later Will may stand IF the prior Will is not revoked!



Presumption of Revocation

- Presumption that the testator revoked his or her will if it cannot be found at death.

Revival

- **Revival** refers to the reinstatement of a will that the testator has already revoked.
- A testator could trigger revival by simply reexecuting the old will or by including an express statement in a new will that the old will is to be effective.