

Challenging a will in Switzerland: the action for annulment

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A will that surprises the family is often the first sign of an estate dispute. Swiss law allows heirs and legatees to ask a court to annul a testamentary disposition, although the grounds are limited and the deadlines are short.

1 Who may bring the action

The action for annulment under Art. 519 et seq. of the Swiss Civil Code (CC) is open to heirs and legatees who would benefit if the disposition fell away. It is a claim before the civil courts and has to be brought against those who gain from the contested will. Where the deceased had their last domicile in Switzerland, the Swiss courts at that domicile are generally competent, while cases with a foreign domicile raise questions of jurisdiction and applicable law under the Federal Act on Private International Law.

2 Lack of capacity and defects of intention

A will may be annulled if the testator lacked testamentary capacity when making it, for instance because of advanced dementia. Capacity is presumed, so the person challenging the will bears the burden of proof and will usually rely on medical records, witness statements and the circumstances of the signing. A disposition may also be annulled where it was made under error, fraudulent deception, threat or duress, or where its content or an attached condition is unlawful or immoral.

3 Formal defects

Swiss law recognises the holographic will, written entirely by hand, dated and signed by the testator, the public will made before a notary with two witnesses, and the oral emergency will. A will that does not comply with

the prescribed form can be challenged under Art. 520 CC. In international cases, Switzerland applies the Hague Convention on the form of testamentary dispositions, so a will that is valid in form where it was made may also be valid in Switzerland.

4 Deadlines

The time limits are strict. Under Art. 521 CC the action must, as a rule, be brought within one year of the claimant learning of the disposition and of the ground for annulment, and in any event within ten years of the opening of the will, with a longer period against a defendant acting in bad faith. Because these are forfeiture periods, a late claim generally fails regardless of its merits, and the precise starting date is frequently disputed.

5 What pays off in practice

- **Record the date of knowledge** when the will was received and when doubts about it arose, since deadlines run from these points.
- **Secure medical evidence** quickly, as records and recollections become harder to obtain over time.
- **Consider abatement in parallel** where the will also infringes compulsory portions, since the two actions pursue different aims.

6 How Ressos Legal helps

I advise heirs and beneficiaries in Switzerland and abroad on whether a will can be challenged and represent them in negotiations and court proceedings. [Contact me](#) for a first conversation.

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