INHERITANCE FORGERY

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ABSTRACT

Many venerable norms in inheritance law were designed to prevent forgery. Most prominently, since 1837, the Wills Act has required testators to express their last wishes in a signed and witnessed writing. Likewise, the court-supervised probate process helped ensure that a donative instrument was genuine and that assets passed to their rightful owners. But in the mid-twentieth century, concern about forgery waned. Based in part on the perception that counterfeit estate plans are rare, several states relaxed the Wills Act and authorized new formalities for notarized and even digital wills. In addition, lawmakers encouraged owners to bypass probate altogether by transmitting wealth through devices such as life insurance and transfer-on-death deeds.

This Article offers a fresh look at inheritance-related forgery. Cutting against the conventional wisdom, it discovers that counterfeit donative instruments are a serious problem. Using reported cases, empirical research, grand jury investigations, and media stories, it reveals that courts routinely adjudicate credible claims that wills, deeds, and life insurance beneficiary designations are illegitimate. The Article then argues that the persistence of inheritance-related forgeries casts doubt on the wisdom of some recent innovations, including statutes that permit notarized and electronic wills. The Article also challenges well-established inheritance law norms, including the litigation presumptions in will-forgery contests, the widespread practice of rubber-stamping deeds, and the delegation of responsibility for authenticating a nonprobate transfer to private companies. Finally, the Article outlines reforms to modernize succession while remaining sensitive to the risks of forgery.

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INTRODUCTION

In 2013, a widower named Earl Field died in a small Kansas town, leaving $20 million in property and two documents that purported to be his will.[1] One, which Field had executed in 2010, was prepared by his longtime attorney and left most of his assets to a charitable foundation run by his alma mater, Fort Hays State University ("FHSU").[2] But a month before Field passed away, he allegedly created a codicil—an amendment to his estate plan—by drafting a letter that gave half of his property to his bookkeeper and caretaker, Wanda Oborny.[3] This self-made letter appeared to bear the signatures

1. *In re* Estate of Field, 414 P.3d 1217, 1221 (Kan. Ct. App. 2018); Brief of Appellee Fort Hays State University Foundation at 2, 15, *In re Field*, 414 P.3d 1217 (Nos. 116,456 and 117,079), 2017 WL 2616253, at *2, *15 [hereinafter *Field* FHSU Brief].

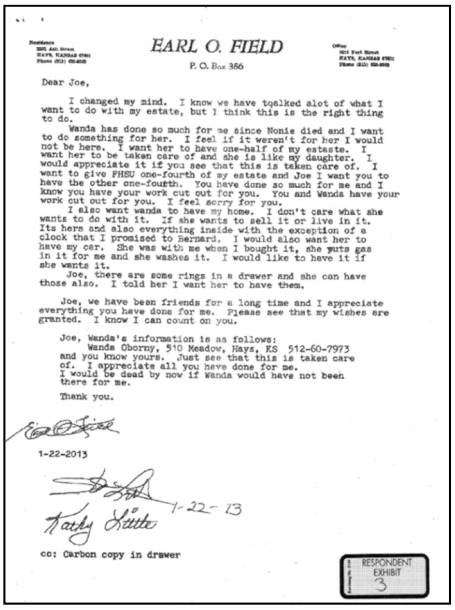
2. *In re Field*, 414 P.3d at 1221.

3. *Field* FHSU Brief, *supra* note 1, at 2. The letter stated in part:

> Dear Joe,
>
> I changed my mind. I know we have [talked a lot] of what I want to do with my estate, but I think this is the right thing to do.
>
> Wanda has done so much for me since [my wife] died and I want to do something for her. I feel if it weren't for her I would not be here. I want her to have one-half of my estaste [sic]. . . .
>
> I also want [W]anda to have my home.

of Field and two witnesses, Steve and Kathy Little.[4] Because it seemed to satisfy the black-letter requirements for making a will, it enjoyed a presumption of validity.[5]

Figure 1: Earl Field's Purported Codicil[6]



EARL O. FIELD

P. O. Box 386

Dear Joe,

I changed my mind. I know we have toalked alot of what I want to do with my estate, but I think this is the right thing to do.

Wanda has done so much for me since Nonie died and I want to do something for her. I feel if it weren't for her I would not be here. I want her to have one-half of my estate. I want her to be taken care of and she is like my daughter. I would appreciate it if you see that this is taken care of. I want to give FHSU one-fourth of my estate and Joe I want you to have the other one-fourth. You have done so much for me and I know you have your work cut out for you. You and Wanda have your work cut out for you. I feel sorry for you.

I also want wanda to have my home. I don't care what she wants to do with it. If she wants to sell it or live in it. Its hers and also everything inside with the exseption of a clock that I promised to Hayward. I would also want her to have my car. She was with me when I bought it, she puts gas in it for me and she washes it. I would like to have it if she wants it.

Joe, there are some rings in a drawer and she can have those also. I told her I want her to have them.

Joe, we have been friends for a long time and I appreciate everything you have done for me. Please see that my wishes are granted. I know I can count on you.

Joe, Wanda's information is as follows:
Wanda Oborny, 510 Meadow, Hays, KS 512-60-7973
and you know yours. Just see that this is taken care of. I appreciate all you neve done for me. I would be dead by now if Wanda would have not been there for me.

Thenk you.

1-22-2013

1-22-13

cc: Carbon copy in drawer

RESPONDENT EXHIBIT 3

However, the circumstances surrounding the creation of this instrument were suspicious. Oborny initially claimed that she had found two similar but unwitnessed letters inside Field's office desk drawer.[7] Only after she learned that a valid will must be executed by attesting witnesses did she supposedly uncover the instrument that Steve and Kathy Little had signed.[8] Even more alarmingly, when the FBI tried to question the Littles about witnessing the disputed codicil, Steve killed Kathy and then committed suicide.[9] Finally, although Field had taken pains to minimize his taxes during life, his bequest to Oborny rather than the charitable FHSU foundation would have

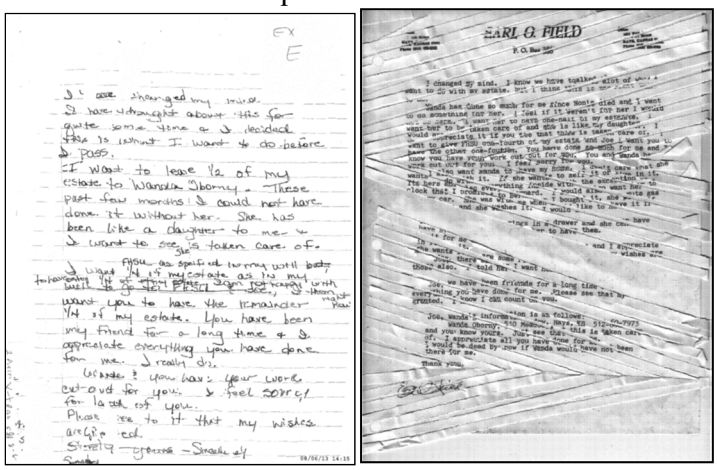
Id. app. D.

4. *In re Field*, 414 P.3d at 1222.
5. *Id.* at 1224.
6. *Field* FHSU Brief, *supra* note 1, app. D.
7. *In re Field*, 414 P.3d at 1222.
8. *Id.*
9. *Id.* at 1228. The Littles were friends with Oborny but barely knew Field. *Id.* at 1222, 1228.

uncharacteristically saddled his estate with millions of dollars in tax liability.[10] Because of these peculiarities, FHSU contested the purported codicil as a forgery.[11]

The discovery of two documents broke the case open. One was a rough draft of the suspicious codicil prepared in Oborny's handwriting.[12] The second was an unwitnessed, verbatim copy of the purported codicil, complete with the same typographical errors and an identical version of Field's signature.[13] Both were found in a paper shredder near Oborny's desk.[14] These documents suggested that Oborny, not Field, had drafted the purported codicil, traced Field's signature from another document, Xeroxed the page, and arranged for the Littles to sign it.[15]

Figure 2: The Handwritten and Shredded Drafts of the Purported Codicil[16]



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In 2014, Jennifer Merin went to inspect a house she was about to inherit in Queens, New York, and found Darrell Beatty, a stranger,

10. *Id.* at 1232.
11. *Id.* at 1223.
12. *Id.* at 1230.
13. *Id.* at 1226.
14. *Id.* at 1230.
15. *See id.* at 1226–27.
16. *Field* FHSU Brief, *supra* note 1, apps. E and F.

living there.[17] The property had been in Merin's family for eight decades and was going to belong to her when she finished administering her mother's estate.[18] Nevertheless, she discovered that Beatty had changed the locks, broken the garage door, taken her car, and either stolen or broken the heirlooms inside.[19]

Figure 3: Damage Inside Merin's Home[20]

When the police arrived, Merin's nightmare intensified.[21] Telling the officers that he was the real owner, Beatty produced a deed to the house in his name.[22] Although this document lacked a legal description and stated that Beatty had purchased title from a dead person "residing" at a nonexistent address, it had been officially recorded by the New York City Register.[23] Thus, the police refused to intervene.[24]

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17. Merin v. City of New York, No. 713069/15, 2016 WL 3454185, at *1 (N.Y. Sup. Ct. May 12, 2016).

18. *See* Plaintiff's Memorandum of Law in Opposition to Defendants' Motion to Dismiss Complaint at 4, *Merin*, 2016 WL 3417989 [hereinafter *Merin* Opposition Brief]; Barbara Ross, *Woman, 72, Whose Family House Was Stolen Through Deed Fraud Has No Right To Sue*, N.Y. DAILY NEWS (May 13, 2016, 5:18 PM), https://www.nydailynews.com/new-york/queens/house-scam-victim-no-sue-queens-judge-rules-article-1.2636121 [https://perma.cc/D2GE-YQXC].

19. *Merin* Opposition Brief, *supra* note 18, at 6.

20. Ross, *supra* note 18.

21. *See Merin* Opposition Brief, *supra* note 18, at 6.

22. *Id.*

23. *Id.* at 5.

24. *Id.* at 6.

In 2008, Daniel Parker, who lived in Mississippi, bought a policy from Chesapeake Life Insurance Company.[25] Daniel named his wife, Gathel, as the death beneficiary and his daughter, Jessica, as the contingent beneficiary.[26] In 2014, Daniel separated from Gathel, moved to Wisconsin, and began living with his sister, Connie.[27] A year later, Chesapeake received a beneficiary-change request in which Daniel ostensibly substituted Connie for Gathel as the primary beneficiary.[28] There was just one problem: the signature on Daniel's 2008 life insurance application looked nothing like the signature on his 2015 change request.[29] Thus, after Daniel died in 2016, Gathel and Jessica challenged the 2015 form as a "blatant forgery."[30]

Figure 4: Daniel's 2008 Life Insurance Application[31]

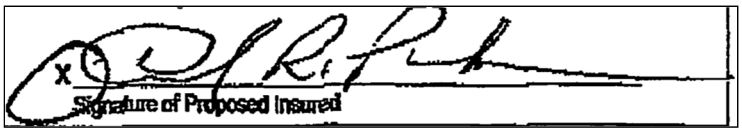
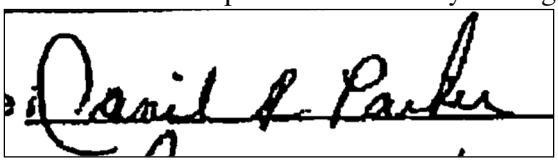


Figure 5: Daniel's 2015 Purported Beneficiary-Change Request[32]



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Forgery was once the great boogeyman of inheritance law. This concern is easy to understand. Inheritance law's primary goal is to honor an owner's intent about how to distribute her property at

25. Chesapeake Life Ins. v. Parker, No. 18-C-643, 2018 WL 4188469, at *1 (E.D. Wis. Aug. 31, 2018).

26. *Id.*

27. *Id.* at *2, *4.

28. *Id.* at *1.

29. *Id.* at *1.

30. Order Denying Summary Judgment at 7, *Chesapeake Life Ins.*, 2018 WL 2766205, at *3.

31. Daniel R. Parker Life Insurance Application with Chesapeake Life Insurance Co. at 2, *Chesapeake Life Ins.*, 2018 WL 2766205 (filed June 30, 2017).

32. Daniel R. Parker Beneficiary Change Request with Chesapeake Life Insurance Co. at 2, *Chesapeake Life Ins.*, 2018 WL 2766205 (filed June 30, 2017).

death.[33] But the succession process suffers from what is known as the "worst evidence" problem: decedents cannot speak up to correct the record, clarify their wishes, or protect their interests.[34] In turn, this informational vacuum creates a window for opportunists.

Historically, the legal system went to great lengths to close this gap. For example, the first criminal laws against forgery, which emerged in ancient Rome, were specifically designed to combat phony wills.[35] Likewise, the Wills Act of 1837 requires testators to sign their wills before two witnesses who are present at the same time to "guard against forgery."[36] And the practice of requiring probate court supervision helps prevent estate fraud, such as theft of a decedent's real property by deed forgery.[37] These measures reflected the idea that forgery was a grave threat to the orderly flow of assets from the dead to the living.

But in the twentieth century, perceptions changed. Critics observed that courts were rejecting would-be testamentary instruments for minor deviations from the Wills Act, making the law of will execution "notorious for its harsh and relentless formalism."[38] As a result, the greatest barrier to implementing a decedent's intent no longer seemed to be outsiders hijacking the execution process; rather, it seemed to be the execution process itself. Likewise, dissatisfaction with the cumbersome probate system fed the consensus that court supervision of estates was "cautious to the point of absurdity."[39] Consequently, the cures for estate-related forgery came to be seen as worse than the disease.

This critical view of traditional probate protections left a deep imprint on the law. Over the last two decades, the Uniform Probate Code ("UPC") and several jurisdictions have authorized unwitnessed but notarized wills and permitted courts to forgive harmless deviations

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33. *See* RESTATEMENT (THIRD) OF PROP.: WILLS AND DONATIVE TRANSFERS § 10.1 (AM. LAW INST. 2003); Ashbel G. Gulliver & Catherine J. Tilson, *Classification of Gratuitous Transfers*, 51 YALE L.J. 1, 2 (1941).

34. John H. Langbein, *Will Contests*, 103 YALE L.J. 2039, 2044, 2046 (1994) (book review).

35. J. W. Cecil Turner, *"Documents" in the Law of Forgery*, 32 VA. L. REV. 939, 941 (1946).

36. Waller v. Waller, 42 Va. (1 Gratt.) 454, 476 (1845); *see* Wills Act 1837, 7 Will. 4 & 1 Vict. c. 26, § 9 (Eng., Wales & N. Ir.).

37. *See, e.g.*, PAULA A. MONOPOLI, AMERICAN PROBATE: PROTECTING THE PUBLIC, IMPROVING THE PROCESS 57 (2003) (describing probate's title-clearing function).

38. John H. Langbein, *Substantial Compliance with the Wills Act*, 88 HARV. L. REV. 489, 489 (1975).

39. Charles Dent Bostick, *The Revocable Trust: A Means of Avoiding Probate in the Small Estate?*, 21 U. FLA. L. REV. 44, 48 (1968).

from the Wills Act.[40] In an even sharper break from tradition, a handful of states have recently passed laws permitting testators to create electronic wills.[41] Finally, in a movement called the nonprobate revolution, owners began structuring their estate plans around devices that can transmit wealth without court oversight, such as life insurance and transfer-on-death deeds ("TODDs").[42] These developments stem, in part, from "the prevailing view . . . that forgery is rare."[43]

This Article challenges this conventional wisdom by offering the first scholarly investigation of forgery related to decedents' estates ("inheritance forgery").[44] It begins by demonstrating that inheritance forgery has not disappeared. In fact, since 2000, there have been several hundred reported opinions involving a litigated claim of inheritance forgery. And in more than one hundred such cases, inheritance forgery was a central issue in the litigation. Additionally, the number of undetected forgeries, unprobated estates, and privately settled disputes, as well as the enormous volume of summary court adjudications, surely dwarfs the number of litigated cases that have generated a reported judicial opinion. This steady stream of disputes has exposed the confusion surrounding forgery litigation. For example, related doctrines such as undue influence have well-oiled burden-shifting rubrics that streamline will contests.[45] But because forgery doctrines do not possess such mechanisms, this type of misconduct is difficult and often expensive to prove. Consider the forged codicil in *In re Estate of Field*.[46] Although this instrument might seem like an obvious sham in hindsight, FHSU needed nine days, thirty witnesses, and over three hundred exhibits to prevail at trial.[47] In fact, Oborny

40. *See infra* Part I.B.

41. *See infra* notes 113–16 and accompanying text.

42. For the classic article on this movement, see generally John H. Langbein, *The Nonprobate Revolution and the Future of the Law of Succession*, 97 HARV. L. REV. 1108 (1984) [hereinafter Langbein, *The Nonprobate Revolution*]. For more on the basics of TODDs, see Stephanie Emrick, Note, *Transfer on Death Deeds: It Is Time To Establish the Rules of the Game*, 70 FLA. L. REV. 469, 473–81 (2018).

43. James Lindgren, *Abolishing the Attestation Requirement for Wills*, 68 N.C. L. REV. 541, 571 n.193 (1990).

44. This Article uses the term "inheritance forgery" to describe the broad range of forgery schemes that target the transfer of property shortly before, during, or shortly after the owner's death.

45. *See infra* Part III.A.2.

46. *In re* Estate of Field, 414 P.3d 1217 (Kan. Ct. App. 2018); *see supra* notes 1–16 and accompanying text.

47. *In re Field*, 414 P.3d at 1221.

came so close to winning that the trial court granted her $1 million under a state statute that authorizes awards of attorneys' fees for "any person named in a will or purported codicil . . . [who] prosecutes any proceedings in good faith."[48]

Unfortunately, inheritance forgery is not limited to wills. The phenomenon also mars other popular gratuitous transfers. Scores of recent newspaper articles[49] and a startling December 2018 Grand Jury Report from the Manhattan District Attorney's Office have described a national "epidemic" of counterfeit deeds involving real property owned by estates.[50] These bogus documents exploit a glaring loophole in municipal deed-recording practices: officials often *cannot* refuse to

48. *Id.* at 1234 (quoting KAN. STAT. ANN. § 59-1504 (2018)). However, the trial court's award of attorney's fees was reversed on appeal. *Id.* at 1235.

49. In Philadelphia, for instance, investigative journalist Craig McCoy has reported extensively for the Philadelphia Inquirer on the scale and scope of the deed-theft problem. *See* Craig R. McCoy, *Stealing from the Dead*, PHILA. INQUIRER (Jan. 23, 2019), https://www.inquirer.com/news/a/house-sales-fraud-theft-philadelphia-real-estate-dead-owners-william-johnson-20190124.html [https://perma.cc/YS5P-FQZK] ("They are all dead. Yet if city records are to be believed, they all walked into the office of a notary public and signed away their homes, which just happened to be in gentrifying neighborhoods with soaring property values."); *see also* Craig R. McCoy, *After a Mass Theft of Philly Houses, Foreign Nationals Flee the Country, DA Says*, PHILA. INQUIRER (May 1, 2019), https://www.inquirer.com/news/housing-theft-philadelphia-deeds-fraud-20190501.html [https://perma.cc/Y266-FJN4]; Craig R. McCoy, *Ex-Con Charged with Stealing Homes from the Dead*, PHILA. INQUIRER (Feb. 7, 2019), https://www.inquirer.com/news/theft-housing-fraud-deeds-willliam-johnson-krasner-20190207.html [https://perma.cc/GH4F-XQQY]; Craig R. McCoy, *In Philly, Your House Being Ripped Off Isn't Always Enough To Get Help from Police and the DA*, PHILA. INQUIRER (July 6, 2019), https://www.inquirer.com/news/house-theft-philadelphia-larry-krasner-forged-deeds-20190706.html [https://perma.cc/6HLK-NT3B]; Craig R. McCoy, *Philly DA Charges Point Breeze Man with Stealing Properties from the Dead*, PHILA. INQUIRER (Mar. 8, 2019), https://www.inquirer.com/news/housing-theft-robert-stokes-district-attorney-larry-krasner-20190308.html [https://perma.cc/55BU-8FHQ]; Craig R. McCoy, *A Real Estate Fortune Built on a Foundation of Forged Deeds and Tangled Titles*, PHILA. INQUIRER (May 29, 2019), https://www.inquirer.com/news/house-theft-philadelphia-deeds-forgery-20190529.html [https://perma.cc/JU4W-UFET]; Craig R. McCoy, *Seven Ways the City Can Crack Down on House Theft*, PHILA. INQUIRER (June 3, 2019), https://www.inquirer.com/news/house-theft-deeds-fraud-forgery-philadelphia-20190603.html [https://perma.cc/2GBY-MSAB]; Craig R. McCoy, *With Questionable Signatures and a Dubious Will, a Man Lays Claim to a Dead Woman's House*, PHILA. INQUIRER (Feb. 21, 2019), https://www.inquirer.com/news/deed-will-forged-house-theft-philadelphia-william-johnson-20190221.html [https://perma.cc/W6UY-WJPY]. This Article discusses deed forgery in detail in *infra* Part II.B.

50. GRAND JURY OF THE SUPREME COURT OF THE STATE OF N.Y., REPORT OF THE GRAND JURY 1, 8 (2018) [hereinafter Manhattan Grand Jury Report] (noting that the grand jury received "evidence establishing that homeowners who purportedly signed deeds to convey their properties had been deceased several years earlier, or even several decades before the alleged conveyance").

record a suspicious instrument.[51] The *New York Daily News* illustrated the absurdity of this practice when, in a publicity stunt, it used a fake notary stamp and two fictitious names to obtain title to the Empire State Building.[52] As con artists like Darrell Beatty in *Merin v. City of New York*[53] have recognized, property owned by the deceased is particularly vulnerable.

Finally, fake life insurance beneficiary designations are also a pressing problem. Recall the discrepancy between the signature on Daniel Parker's 2008 application to Chesapeake and his alleged 2015 change-of-beneficiary form.[54] At trial, Daniel's sister, Connie, admitted that she "actually signed the form using Daniel's name."[55] How could an insurance company fail to detect such a conspicuous fabrication? The answer is surprising: these firms have little incentive to discourage forgery. Indeed, if an insurer learns of a forgery allegation before it has paid the proceeds, it can file an interpleader action. This procedural step forces the parties with a stake in the matter to litigate while the insurer recovers its attorneys' fees and costs for "render[ing] beneficial services" to the court.[56] Alternatively, if an insurer disburses funds to a wrongdoer, it can invoke what are known as "facility-of-payment" statutes to shield itself from liability.[57] Liberated from the specter of liability, life insurers impose private formalities that fail to provide meaningful protection against inheritance forgery.

This Article then suggests reforms that would strike a balance between permitting inheritance law to evolve while deterring inheritance forgery. First, it explains why a close reading of will-forgery cases can help states update their Wills Acts and simplify forgery disputes by importing a version of the burden-shifting regime from undue influence. Second, it contends that local officials could contain the problem of estate-related deed forgery by adopting a few

51. *See supra* note 176 and accompanying text.

52. *See* William Sherman, *It Took 90 Minutes for Daily News To "Steal" the Empire State Building*, N.Y. DAILY NEWS (Dec. 2, 2008, 10:46 PM), https://www.nydailynews.com/news/money/90-minutes-daily-news-steal-empire-state-building-article-1.353477 [https://perma.cc/ZZA9-QN9N].

53. Merin v. City of New York, No. 713069/15, 2016 WL 3454185 (N.Y. Sup. Ct. May 12, 2016); *see supra* notes 17–24 and accompanying text.

54. *See supra* notes 25–32 and accompanying text.

55. Chesapeake Life Ins. v. Parker, No. 18-C-643, 2018 WL 4188469, at *1 (E.D. Wis. Aug. 31, 2018).

56. Nat'l Life Ins. v. Alembik-Eisner, 582 F. Supp. 2d 1362, 1372 (N.D. Ga. 2008).

57. *See infra* Part II.C.

straightforward measures. Third, it argues that insurance companies should sometimes face liability when they fail to establish reasonable protections against fake beneficiary designations.

The Article proceeds in three parts. Part I surveys the history of inheritance forgery from ancient Rome to the most recent revisions to the UPC. It shows that forgery's perceived irrelevance has driven some of the most important developments in the field of inheritance law. Part II cuts against this received wisdom by revealing that inheritance forgery continues to threaten the transfer of property at death. Part III then uses insights from this research to outline how states could continue to modernize the succession process while also deterring wrongdoing.

I. THE HISTORY OF INHERITANCE FORGERY

This Part traces the history of forgery in inheritance law. It reveals that many of the ancient rules that populate the field were designed to detect counterfeit wills. It also demonstrates that courts have long struggled with the finer points of forgery contests, such as which party bears the burden of proof. Finally, it explains how policymakers and scholars in the second half of the twentieth century lost sight of these issues.

A. Traditional Protections Against Forgery

Trying to pass off a bogus instrument as legitimate—an act known by the archaic phrase "uttering" a forgery[58]—was once considered a serious offense. The first statute against counterfeiting emerged in 81 B.C., and it was "mainly concerned with [the] falsification of testamentary dispositions."[59] Likewise, in the third century, Roman law extravagantly declared that "[a]nyone who writes . . . a forged will . . . shall be deported to an island."[60] Believe it or not, Anglo-American law was even more severe. In Georgian England, as society became increasingly reliant on paper credit, Parliament passed 120 separate laws against forgery, half of which imposed the death penalty.[61]

58. *See* State v. Washington, 1 S.C.L. (1 Bay) 120, 122 (S.C. Ct. Com. Pl. 1791).

59. Turner, *supra* note 35, at 941.

60. 1 S.P. SCOTT, THE CIVIL LAW 302 (1932).

61. Randall McGowen, *From Pillory to Gallows: The Punishment of Forgery in the Age of the Financial Revolution*, 165 PAST & PRESENT 107, 107 (1999) [hereinafter McGowen, *From Pillory to Gallows*]. Likewise, in early America, "death was considered the only fit punishment

Between 1741 and 1773, at least five people were sent to the gallows for attempting to probate sham wills.[62] Eventually, however, public opinion changed, and these punishments were seen as draconian.[63] In 1832, lawmakers demoted forgery of commercial instruments from a capital crime to a mere felony.[64] They extended the same leniency to creating fake wills in 1837.[65]

Similarly, many important civil norms were designed to ensure the authenticity of testamentary instruments. Execution formalities, for example, date back to 1666, when the Great Fire of London destroyed the city's property records.[66] Because "the effect and even existence of wills were fruitful sources of dispute," it was often unclear who owned land that had been passed down through the generations.[67] In response, Parliament enacted the Statute of Frauds in 1677, which required wills that transmitted land to be written, signed by the testator, and attested by witnesses.[68] A century and a half later, Parliament passed the Wills Act, which extended these rules to all wills and added the requirement that witnesses be "present at the same time" for the testator's execution of the will or acknowledgement of a prior signature.[69] These formalities crossed the Atlantic with the adoption of local Wills Acts by every American state.[70] As the Virginia Supreme Court explained

for the crime of forgery." Furman v. Georgia, 408 U.S. 238, 304 (1972) (Brennan, J., concurring); *see* Act of Apr. 30, 1790, ch. 9, § 14, 1 Stat. 112, 115 (imposing the death penalty for forgery).

62. *See* Randall McGowen, *Forgery and the Twelve Judges in Eighteenth-Century England*, 29 LAW & HIST. REV. 221, 225–26, 231, 238 & n.46, 245 (2011). Although many property offenses were capital crimes, these forgery cases stand out because juries at that time often found creative ways to avoid convicting defendants of nonviolent offenses punishable by death. *See* ADAM JAY HIRSCH, THE RISE OF THE PENITENTIARY: PRISONS AND PUNISHMENT IN EARLY AMERICA 41 (1992).

63. Phil Handler, *Forgery and the End of the "Bloody Code" in Early Nineteenth-Century England*, 48 HIST. J. 683, 684 (2005) ("Forgery became the focal point for opposition to the death penalty . . . .").

64. *See* 2 & 3 Will. 4 c. 62 & c. 123 (1832) (UK).

65. *See* 7 Will. 4 & 1 Vict. c. 26 (1837) (Eng., Wales & N. Ir.).

66. *See* Philip Hamburger, *The Conveyancing Purposes of the Statute of Frauds*, 27 AM. J. LEGAL HIST. 354, 364–66 (1983).

67. *Id.* at 366.

68. *See* Statute of Frauds 1677, 29 Car. 2, ch. 3 (Eng. & Wales).

69. Wills Act 1837, 7 Will. 4 & 1 Vict. c. 26, § 9 (Eng., Wales & N. Ir.).

70. *See, e.g.*, JESSE DUKEMINIER, ROBERT H. SITKOFF & JAMES LINDGREN, WILLS, TRUSTS, AND ESTATES 226–27 (8th ed. 2009).

in 1845, will-execution formalities sought to "connect[] . . . the instrument with the testator so as to guard against forgery."[71]

Roughly half of U.S. jurisdictions also recognize holographic wills, which are valid without witness attestation if all the material provisions are in the testator's handwriting and she has signed the document.[72] In theory, holographic wills contain enough of the testator's handwriting for courts to detect forged wills without witness attestation.[73] But opinions diverge about whether this formality is adequate.[74]

Probate—the court-based regime for administering decedents' estates—was also designed with vigilance in mind. For starters, it establishes a layer of judicial review that backstops the Wills Act formalities.[75] Other transfers, such as gifts and contracts, only find their way into the legal system if they breed litigation, but probate requires every proponent of every will to persuade a court that it is valid.[76] Probate also culminates in a court order that formalizes the transfer of assets from the dead to the living.[77] This paper trail is especially useful for conveying real estate because it makes "records . . . more exact[] and title . . . less clouded."[78]

Despite these safeguards, forgery claims continued to arise during the nineteenth century. These cases revealed diverging views about the appropriate procedural framework for forgery contests. For one, it was unclear whether the proponent or the contestant bore the burden of

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71. Waller v. Waller, 42 Va. (1 Gratt.) 454, 476 (1845); *see also* Murray v. Lewis, 121 A. 525, 527 (N.J. Ch. 1923) ("These [formal testamentary] provisions are reasonable and easily understood and their purpose is to prevent frauds.").

72. *See, e.g.*, Richard Lewis Brown, *The Holograph Problem—The Case Against Holographic Wills*, 74 TENN. L. REV. 93, 93 n.2 (2006). The recognition of holographic wills is based on principles from the Napoleonic Code that likely evolved from will-writing practices in Ancient Rome. *See* R.H. Helmholz, *The Transmission of Legal Institutions: English Law, Roman Law, and Handwritten Wills*, 20 SYRACUSE J. INT'L L. & COM. 147, 153 (1994).

73. *See* Gulliver & Tilson, *supra* note 33, at 13; Lindgren, *supra* note 43, at 558.

74. *See* Mark Glover, *Minimizing Probate-Error Risk*, 49 U. MICH. J.L. REFORM 335, 381 n.213 (2016) ("Some argue that holographs are particularly susceptible to fraud and forgery."); Kevin R. Natale, Note, *A Survey, Analysis, and Evaluation of Holographic Will Statutes*, 17 HOFSTRA L. REV. 159, 169 (1988) ("Because of the absence of an attestation requirement, a legitimate concern with holographic wills is that there be sufficient protection against forgery or fraud.").

75. *See, e.g.*, LEWIS M. SIMES & PAUL E. BASYE, PROBLEMS IN PROBATE LAW 401 (1946) (describing the traditional powers of probate courts).

76. *See, e.g.*, Edward H. Ward & J. H. Beuscher, *The Inheritance Process in Wisconsin*, 1950 WIS. L. REV. 393, 394 (1950) ("The transfer of wealth on death typically involves the formal intervention of the state to a degree not true of *inter vivos* transfers.").

77. *See* Langbein, *The Nonprobate Revolution*, *supra* note 42, at 1117.

78. LAWRENCE M. FRIEDMAN, A HISTORY OF AMERICAN LAW 249 (2d ed. 1985).

proof.[79] As noted earlier, the party seeking to enforce a will must have made a threshold showing that it satisfies the Wills Act.[80] Arguably, this meant that if there was doubt about the authenticity of a document, the proponent needed to show that it was real.[81] Yet most courts treated forgery as an affirmative defense, like fraud or undue influence, that the challenger must establish by clear and convincing evidence.[82] This meant that forgery contestants not only bore the burden of proof, but they also had to satisfy that burden with evidence that was especially persuasive. However, the requisite degree of persuasion was not uniform across the states, as courts devised *sui generis*, loosely defined evidentiary standards to deal with will forgeries. For instance, the South Carolina Supreme Court remarked in 1908 that a contestant "must satisfy the court of [forgery] by something more than mere romance and suspicion."[83]

In addition, the use of attestation clauses and self-proving affidavits—short paragraphs within the will in which the witnesses declare they saw the testator sign or acknowledge the document—muddied the waters. Although these provisions can easily be counterfeited, courts viewed them as powerful badges of legitimacy.[84] For example, in *Newell v. White*,[85] two witnesses who had no pecuniary interest in the estate were alleged by the proponent to have attested the will, but they swore at trial that they had neither signed the will nor

79. *See, e.g.*, Charles E. Clark, *Confidential Relations and Burden of Proof of Undue Influence in Will Cases*, 26 YALE L.J. 62, 63 (1916) ("There has been much confusion in the rules determining the incidence of the burden of proof upon a proceeding for the probate of a will.").

80. *See, e.g.*, Williams v. Robinson, 42 Vt. 658, 663–64 (1870) ("[T]he proponent must first proceed with proof of the due execution of the will.").

81. *See, e.g.*, *In re* Simcox's Estate, 11 Pa. C. 545, 550 (Orphans' Ct. 1892), 1892 WL 2904, at *5 ("[T]he burden is upon [the proponent] to prove affirmatively the execution of the paper."); Newell v. White, 73 A. 798, 804 (R.I. 1908) (Blodgett, J., dissenting) (remarking in a forgery contest that "the burden of proving the due and solemn execution of this instrument, which the law wisely casts upon the proponents, has not been sustained").

82. *Cf.* Colby v. Richards, 107 A. 867, 868 (Me. 1919) ("[W]hen a serious crime like forgery is set up in a civil action, the evidence to sustain the charge must be full, clear, and convincing."); Gillis v. Smith, 75 So. 451, 452–53 (Miss. 1917) ("[T]he person alleging that a contract, deed, gift, or will was procured through the exercise of undue influence has the burden of proving that fact. . . . The proof must be clear and convincing." (omission in original) (quoting 1 HENRY CAMPBELL BLACK, A TREATISE ON THE RESCISSION OF CONTRACTS AND CANCELLATION OF WRITTEN INSTRUMENTS § 253 (1916))).

83. Thames v. Rouse, 62 S.E. 254, 254 (S.C. 1908) (quoting the challenged opinion of the circuit court).

84. *See, e.g.*, O'Keefe v. Murphy (*In re* Estate of Murphy), 131 N.W.2d 220, 225 (Minn. 1964) (describing the traditional evidentiary potency of attestation clauses).

85. Newell v. White, 73 A. 798 (R.I. 1908).

even knew of its existence.[86] Nevertheless, the Rhode Island Supreme Court admitted the instrument to probate, relying on the purported will's attestation clause rather than the witnesses' live testimony in court:

> A will, duly attested upon its face, . . . may be admitted to probate, although none of the subscribing witnesses are able to swear, from recollection, that the formalities required by the statute were complied with, and even although some of them should swear positively that they were not . . . .[87]

Finally, the evidence in forgery cases was rarely clear. As one attorney put it, forgery is a "deed[] of darkness" that can be hard to either prove or disprove.[88] Forgery contests usually devolved into a "great mass of conflicting testimony."[89] Occasionally, the will's witnesses took the stand, followed by a second wave of witnesses who spoke to the original witnesses' credibility.[90] Sometimes, judges offered their own opinions about the authenticity of the testator's signature. For example, one New Jersey court decided that the handwriting on a purported will "lacks the life of the genuine signature" and "presents the appearance of a labored and dead production."[91] In other cases, litigants called a motley assortment of "experts," such as "cashiers and tellers of different banks in this city, who were accustomed to examine hundreds of signatures each day"[92] or longtime "merchants and bookkeepers [who] . . . had seen a great many handwritings."[93] Eventually, an entire cottage industry emerged of professional handwriting analysts.[94] This was the birth of forensic science, a

86. *Id.* at 799.

87. *Id.* at 800 (quoting Orser v. Orser, 24 N.Y. 51, 52 (1861)).

88. McGowen, *From Pillory to Gallows*, *supra* note 61, at 115 n.16.

89. *See* Smith v. Smith's Ex'rs, 10 Ky. (3 A.K. Marsh.) 308, 308–09 (1821).

90. *See, e.g.*, Ford v. Ford, 26 Tenn. (7 Hum.) 92, 97 (1846) ("A great number of persons have been examined in relation to the credit of these witnesses. Many support, and some discredit, them.").

91. *In re* Gordon's Will, 26 A. 268, 277 (N.J. Prerog. Ct. 1893), *aff'd sub nom.* Gordon v. Old, 30 A. 19 (N.J. 1894).

92. *In re* Williams' Will, 15 N.Y.S. 828, 833 (Sur. Ct. 1891), *aff'd*, 19 N.Y.S. 778 (Gen. Term 1892), *aff'd*, 36 N.E. 345 (N.Y. 1894).

93. Kennedy v. Upshaw, 1 S.W. 308 (Tex. 1886) (West Headnote 3); Kennedy v. Upshaw, 64 Tex. 411, 420 (1885) (affirming the qualification of expert witnesses who offered opinion testimony at trial regarding the authenticity of signatures on the will).

94. Professional handwriting experts emerged before the dawn of the twentieth century. *See, e.g.*, *In re Williams' Will*, 15 N.Y.S. at 833; The Taylor Will Case, 10 Abb. Pr. (n.s.) 300, 314 (N.Y. Sur. Ct. 1871).

discipline that has long been controversial because it was "invented specifically for use in the legal arena."[95]

B. The Marginalization of Forgery

Despite these developments, massive changes in inheritance law gradually deflected attention away from forgery. To begin with, the unforgiving rules of will execution began to seem like a greater danger to testamentary freedom than the remote possibility of probating counterfeit wills. Courts have refused to enforce writings for trivial deviations from the statutory mandates since the passage of the Wills Act, such as when the testator signed the wrong page[96] or a witness stepped out of the room too early.[97] But as one prescient author asserted in 1875, this practice "ha[d] not succeeded in preventing forgeries," but had instead nullified many "genuine wills."[98] Likewise, in a seminal 1941 piece, Ashbel Gulliver and Catherine Tilson argued that orthodox wills law was overprotective because, unlike the seventeenth-century practice of executing death-bed wills, modern testators typically prepare estate plans at a younger age, thereby avoiding the danger of executing a donative instrument in a vulnerable state of cognitive decline.[99]

Observations like these fed the perception that "forged wills are rare"[100] and "just the stuff of novels."[101] Academics began to mention

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95. Jennifer L. Mnookin, *Scripting Expertise: The History of Handwriting Identification Evidence and the Judicial Construction of Reliability*, 87 VA. L. REV. 1723, 1727 (2001).

96. *See, e.g.*, McGrew v. Bartlett, 387 S.W.2d 702, 703, 705 (Tex. Civ. App. 1965) (holding that a testator failed to sign a will when her signature appeared on a separate affidavit that was attached to the will).

97. *See, e.g.*, *In re* Groffman [1968] 1 W.L.R. 733 at 739 (Eng.) (holding that a will was not witnessed by people who were "present at the same time" when they entered the room where the testator was acknowledging his signature mere moments apart).

98. *The Adolphus Will Case*, LAW J. 561, 562 (1875); *see also* Bruce H. Mann, *Self-Proving Affidavits and Formalism in Wills Adjudication*, 63 WASH. U. L.Q. 39, 60 (1985) [hereinafter Mann, *Self-Proving Affidavits*] ("Courts . . . routinely invalidate wills on formal grounds despite ample evidence that the document offered for probate accurately represents the testator's intent.").

99. *See* Gulliver & Tilson, *supra* note 33, at 10. *But see* Danaya C. Wright & Beth Sterner, *Honoring Probable Intent in Intestacy: An Empirical Assessment of the Default Rules and the Modern Family*, 42 ACTEC L.J. 341, 360 tbl.1 (2017) (finding that 93 percent of decedents in a sample of probate cases were sixty years or older at death and that 61 percent of wills were executed within ten years of death).

100. Lindgren, *supra* note 43, at 558; *see id.* at 571 n.193 ("[T]he prevailing view of scholars [is] that forgery is rare . . . .").

101. *See* Arden Dale, *Forged Wills Are Now Not Just Fiction*, WALL ST. J. (Oct. 15, 2009, 12:09 PM), https://www.wsj.com/articles/SB10001424052748704107204574475221527317840 [https://

forgery only to dismiss it as outmoded and irrelevant: a phenomenon that once may have been "a significant risk," but now is much "less prevalent."[102] Similarly, the *Restatement (Third) of Property: Wills and Other Donative Transfers* does not even list forgery as a grounds for refusing to enforce a will.[103] Assuming that forgery was no longer a major concern, the legal system began to dilute longstanding defenses against misconduct in the will-execution process.[104] Eleven jurisdictions have adopted a novel rule called "harmless error," which allows courts to probate a noncompliant writing if there is strong evidence that the decedent intended it to be her will.[105] In the same vein, the UPC and several states abolished what are known as "purging statutes," which require "interested witnesses"—those who have a dual role in the will as both beneficiary and attesting witness—to forfeit their

perma.cc/E7PB-ZEX8] (discrediting this contention).

102. Glover, *supra* note 74, at 355. Citing the prevailing view of scholars, even one of us has recited the conventional wisdom that "deathbed wills and deed forgeries are uncommon." Reid Kress Weisbord, *Wills for Everyone: Helping Individuals Opt Out of Intestacy*, 53 B.C. L. REV. 877, 914 (2012).

103. *See* RESTATEMENT (THIRD) OF PROP.: WILLS & DONATIVE TRANSFERS § 8.3 (AM. LAW INST. 2003) (mentioning fraud, undue influence, and duress). In a comment, the Restatement observes that "[i]f the donor's signature on a donative document was forged, the document is not valid because the document was not signed by the donor." *Id.* cmt. o. This suggests that forgery is not an independent defense to enforcement, but rather an application of the general principle that a will must be "signed by the testator." *Id.* § 3.1. However, the Restatement also provides that "the burden of establishing . . . forgery . . . is on the party contesting the validity of the donative transfer." *Id.* § 8.3 cmt. o. This is confusing, because it seems to contradict the general principle that the proponent of the will bears the burden of proving that the testator signed it. *See supra* note 82 and accompanying text. The RESTATEMENT (SECOND) OF PROP.: DONATIVE TRANSFERS § 34.7 (AM. LAW. INST. 1992) does not mention forgery at all in its discussion of transfers induced by undue influence, duress, fraud, or mistake.

104. Forgery is still prohibited by criminal law, but it is no longer a capital crime. *See*, *e.g.*, N.Y. PENAL LAW §§ 70.00(2)(d), 170.10 (McKinney 2018) (prohibiting the falsification of deeds, wills, codicils, and contracts as forgery in the second degree, a class D felony punishable by seven years' imprisonment). Some prosecutors, however, have stated publicly that inheritance forgery is a low priority. *See* Craig R. McCoy, *A Philadelphia Story: Falsely Declared Dead, Home Stolen and No One Will Help*, PHILA. INQUIRER (July 2, 2018) [hereinafter McCoy, *A Philadelphia Story*], https://www.inquirer.com/philly/news/breaking/stolen-abandoned-houses-deeds-theft-fraud-philadelphia-20180629.html [https://perma.cc/QBJ4-GHWW].

105. CAL. PROB. CODE § 6110(c)(2) (West 2018); COLO. REV. STAT. § 15-11-503 (2018); HAW. REV. STAT. § 560:2-503 (2018); MICH. COMP. LAWS § 700.2503 (2017); MONT. CODE ANN. § 72-2-523 (2018); N.J. STAT. ANN. § 3B:3-3 (West 2019); OHIO REV. CODE ANN. § 2107.24 (West 2018); OR. REV. STAT. § 112.238 (2018); S.D. CODIFIED LAWS § 29A-2-503 (2018); UTAH CODE ANN. § 75-2-503 (West 2019); VA. CODE ANN. § 64.2-404 (2018); UNIF. PROBATE CODE § 2-503 (amended 2010); RESTATEMENT (THIRD) OF PROP.: WILLS & OTHER DONATIVE TRANSFERS § 3.3 (AM. LAW INST. 1999).

inheritance.[106] The UPC's drafters believed that purging statutes were more likely to punish innocent beneficiaries than to deter misconduct by interested beneficiaries against vulnerable testators.[107] Fourteen jurisdictions and the UPC have similarly liberalized the requirements for holographic wills by mandating that only the "signature and the material provisions [or portions] of the will"—rather than the entire document—be written "in the testator's handwriting."[108] This reform allows courts to validate a holograph "even though immaterial parts such as date or introductory wording are printed, typed, or stamped."[109] Lastly, in 2008, the UPC authorized testators to secure a notary's approval instead of witnesses.[110] This maneuver sought to align the law with a common—but mistaken—view that notarization is a proper substitute for witness attestation.[111] Lawrence Waggoner, one of the UPC's reporters, acknowledged that this relaxation of the Wills Act might create the "possibility of wrongdoing" but ultimately dismissed this concern:

> To be sure, someone could forge a relative's will and, using fake identification, perhaps succeed in getting it notarized. That danger is also present, however, in the case of an attested will in which, under the UPC and many non-UPC statutes, the attesting witnesses need not know the testator and need not be disinterested. A fraudulent will, whether attested or notarized, would typically be challenged by

106. UNIF. PROBATE CODE § 2-505(b) ("The signing of a will by an interested witness does not invalidate the will or any provision of it."); *see also* MONT. CODE ANN. § 72-2-525; N.D. CENT. CODE § 30.1-08-05 (2018); UTAH CODE ANN. § 75-2-505.

107. The UPC drafters predicted that rational wrongdoers would want to avoid compromising the appearance of their own objectivity by keeping themselves at arm's length from the will-making process; thus, instead of signing as an attesting witnesses, wrongdoers would prefer to "procure disinterested witnesses." UNIF. PROBATE CODE § 2-505(b) cmt.

108. *Id.* § 2-503 cmt. ("material provisions"); *Id.* § 2-502(b) (amended 1993), 8 U.L.A. 145 (1998) ("material portions"); *see also* ALASKA STAT. § 13.12.502(b) (2018); ARIZ. REV. STAT. ANN. §§ 14-2502B, 2503 (2019); CAL. PROB. CODE § 6111; COLO. REV. STAT. § 15-11-502(2), (3); HAW. REV. STAT. § 560:2-502(b), (c); IDAHO CODE § 15-2-503 (2018); ME. STAT. tit. 18-A, § 2-503 (2019); MICH. COMP. LAWS § 700.2502(2), (3); MONT. CODE ANN. § 72-2-522(2), (3); N.J. STAT. ANN. § 3B:3-3; N.D. CENT. CODE § 30.1-08-02(2), (3); S.D. CODIFIED LAWS § 29A-2-502(a), (c); TENN. CODE ANN. § 32-1-105 (2019); UTAH CODE ANN. § 75-2-502(2), (3).

109. UNIF. PROBATE CODE § 2-502(b) cmt.

110. *See id.* § 2-502(a)(3)(B); *see also* COLO. REV. STAT. § 15-11-502; N.D. CENT. CODE § 30.1-08-02.

111. *See* UNIF. PROBATE CODE § 2-502(a)(3)(B) cmt.

> the decedent's disappointed relatives. The law has long relied upon the courts to identify such cases and rule accordingly.[112]

The movement to modernize the Wills Act has shifted into high gear since 2017. Because millennials "are so acclimated to digital and electronic forms of communication that they seldom encounter sheets of paper in their daily lives," there has been rising interest in bringing the law of will execution into the digital age.[113] Companies that offer do-it-yourself legal services, including LegalZoom and Bequest, Inc., began trying to persuade state legislatures to permit them to oversee the creation of digital wills over the internet and then serve as "qualified custodians" who would "store the executed electronic document[] for an additional fee."[114] As a result, several American jurisdictions have either passed or are considering laws that expressly validate electronic wills,[115] and the Uniform Law Commission has released a draft Electronic Wills Act.[116]

Meanwhile, as the rules of will execution were evolving, a movement known as the nonprobate revolution transformed the estate-planning industry. In 1965, Norman Dacey published *How to Avoid Probate!*, a surprise best-seller that contended that the conventional court-bound process for administering decedents' assets was slow, expensive, and unnecessary.[117] Individuals began relying on "will substitutes," such as pensions, joint accounts, and revocable trusts, all of which transmit wealth privately.[118]

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112. Lawrence W. Waggoner, *The UPC Authorizes Notarized Wills*, 34 ACTEC L.J. 83, 84, 86 (2008) (footnote omitted).

113. John H. Langbein, *Absorbing South Australia's Wills Act Dispensing Power in the United States: Emulation, Resistance, Expansion*, 38 ADEL. L. REV. 1, 9 (2017); *see also Developments in the Law: More Data, More Problems*, 131 HARV. L. REV. 1714, 1790–91 (2018) (describing societal forces that have sparked interest in electronic wills); David Horton, *Tomorrow's Inheritance: The Frontiers of Estate Planning Formalism*, 58 B.C. L. REV. 539, 563–77 (2017) (explaining why it is unclear whether e-wills are valid under traditional wills law).

114. NAT'L CONFERENCE OF COMM'RS ON UNIF. STATE LAWS, DRAFT: ELECTRONIC WILLS ACT 2 (Oct. 24, 2018) [hereinafter DRAFT ELECTRONIC WILLS ACT], https://www.uniformlaws.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=5713cffd-8bf2-e628-4469-aa8152b81931&forceDialog=0 [https://perma.cc/P8C3-HL47].

115. *See* NEV. REV. STAT. § 133.085 (2019); H.B. 2656, 53d Leg., 2d Reg. Sess. (Ariz. 2018); H.E.A. 1303, 120th Gen. Assemb., 2d Reg. Sess. (Ind. 2018); DRAFT ELECTRONIC WILLS ACT, *supra* note 114, at 2 (noting that e-will legislation is pending in California, Florida, and New Hampshire).

116. DRAFT ELECTRONIC WILLS ACT, *supra* note 114, at 1–2.

117. *See* NORMAN F. DACEY, HOW TO AVOID PROBATE—UPDATED! 15–23 (2d ed. 1980).

118. Langbein, *The Nonprobate Revolution*, *supra* note 42, at 1109–15 (surveying these methods).

Two of these mechanisms are especially important for our purposes. First, fueled by the desire for probate avoidance, the total amount of life insurance coverage in the United States soared from $586 billion in 1960[119] to $20.8 trillion in 2015, as measured in nominal dollars.[120] Second, in the last decade, sixteen states have passed the Uniform Real Property Transfer on Death Act ("URPTDA"), which allows owners to convey land posthumously simply by naming a beneficiary on a TODD and recording that deed as the property's formal titling instrument.[121] The designation of death beneficiaries for both of these techniques is functionally identical to the equivalent procedure for wills because the owner can freely amend them until she passes away.[122] Yet neither needs to comply with the Wills Act. Indeed, insurance companies promulgate their own idiosyncratic formalities that govern what insureds must do to name or change beneficiaries.[123] Likewise, TODDs must only bear the grantor's signature and a notary's seal.[124] These changes demonstrate that lawmakers have become much less preoccupied with ensuring that a purported donative transfer is genuine.

In sum, the need to prevent estate-related forgery was once a major concern, but now it barely registers on the policymaking radar. Next, this Article explains why the legal system should take inheritance forgery more seriously.

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119. BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR, A BLS READER ON PRODUCTIVITY 174 (1983).

120. AM. COUNCIL OF LIFE INSURERS, LIFE INSURERS FACT BOOK 2016, at 63 (2016), https://www.acli.com/-/media/ACLI/Files/Fact-Books-Public/2016LIFactBook.ashx?la=en [https://perma.cc/JL69-PWQ4].

121. UNIF. REAL PROP. TRANSFER ON DEATH ACT (UNIF. LAW COMM'N 2009); *see* ALASKA STAT. §§ 13.48.010–.195 (2018); D.C. CODE §§ 19-604.01–.19 (2018); HAW. REV. STAT. §§ 527-1 to -17 (2018); 755 ILL. COMP. STAT. 27/1 (2018); NEB. REV. STAT. §§ 76-3401 to -3423 (2018); NEV. REV. STAT. §§ 111.655–.699 (2018); N.M. STAT. ANN. 1978, §§ 45-6-401 to -417 (2018); N.D. CENT. CODE §§ 30.1-32.1-01 to -14 (2018); OR. REV. STAT. §§ 93.948–.979 (2018); S.D. CODIFIED LAWS §§ 29A-6-401 to -435 (2018); TEX. EST. CODE ANN. §§ 114.001–.152 (West 2018); VA. CODE ANN. §§ 64.2-621 to -638 (2018); WASH. REV. CODE §§ 64.80.010–.904 (2018); W. VA. CODE §§ 36-12-1 to -17 (2018); H.B. 94, 2018 Leg., REG. SESS. (Utah 2018).

122. *See* UNIF. REAL PROP. TRANSFER ON DEATH ACT § 6 ("A transfer on death deed is revocable even if the deed or another instrument contains a contrary provision."); Langbein, *The Nonprobate Revolution*, *supra* note 42, at 1110 (explaining why "[t]he beneficiary designation in a life insurance policy serves precisely the function of the designation of a devisee in a will").

123. *See infra* Part II.C.

124. UNIF. REAL PROP. TRANSFER ON DEATH ACT § 9 ("A transfer on death deed . . . must contain the essential elements and formalities of a properly recordable inter vivos deed"); *id.* cmt. (explaining what those elements are).

II. MODERN INHERITANCE FORGERY

This Part examines the three most problematic types of inheritance forgery: wills, real-property deeds, and life insurance death-beneficiary designations. To challenge the prevailing view that inheritance forgery is a *de minimis* problem, we reviewed several hundred recently reported judicial opinions that addressed or mentioned a claim of inheritance forgery. We then analyzed in greater detail more than one hundred court cases decided since 2000 in which inheritance forgery was a central issue in the litigation.[125] The discussion in this Part focuses on the latter set of cases. Along the way, this Part also identifies regulatory gaps that may contribute to the pervasiveness of falsified instruments in modern wealth transfer.

A. Wills

Contrary to conventional wisdom, the ancient scam of will forgery remains a serious problem. To understand the modern practice of will forgery and how courts have dealt with will-forgery contests, we examined more than forty court decisions in the last two decades in which a contestant asserted a nonfrivolous claim of will forgery.[126] We collect those opinions in Table 1 of the Appendix. In a majority of cases decided on the merits, courts held that the contested will or signature was not authentic.[127] Moreover, empirical evidence from probate court reveals that allegations of forgery are relatively common. One of us has assembled a dataset of every matter on the probate court's docket in Alameda County, California between January 1, 2009, and December

125. Of course, our research does not support any conclusion about the change of inheritance forgery over time. It also necessarily excludes the many forged instruments that go undetected and the countless disputes resolved without litigation or settled before a court rendered a decision. Thus, we surmise that the sample of forgery cases collected in this Article represents only a small fraction of the overall volume of forged inheritance documents.

126. There are also anecdotal reports from outside of the United States that "[w]ill forgery is not as uncommon as one might think or hope." Alexander Learmonth, *Forgery and Forensics—Or, How Not To Forge a Will and Get Away with It*, CHANCERY BAR (2016), https://www.chba.org.uk/for-members/library/overseas-seminars/forgery-forensics [https://perma.cc/PW3R-FBD3].

127. A Westlaw search of state and federal court opinions for the prior twenty-year period, 1980–2000, also retrieved numerous will-forgery contests. *See, e.g.*, Sokol v. Moses, 545 So. 2d 950 (Fla. Dist. Ct. App. 1989) (involving party admission of forgery); Dozier v. Smith, 446 So. 2d 1107 (Fla. Dist. Ct. App. 1984) (regarding a will set aside by the trial court but reversed on appeal); Estate of Jeziorski v. Tomera, 516 N.E.2d 422 (Ill. App. Ct. 1987) (reversing the trial court's dismissal of a forgery claim); *In re* Shettler Estate, 39 Pa. D. & C.3d 524 (Orphans' Ct. 1984) (setting aside a challenged will).

31, 2010. In these estates, about 10 percent of will contests—seven out of seventy-four—featured forgery claims.[128]

Several motifs emerge from will-forgery cases. First, an alarming number of cases involve crooked notaries. To give one high-profile example, Teddy Pendergrass, a platinum-selling R&B singer, died in Philadelphia in 2010.[129] Pendergrass was famous not only for his baritone, but also for his grit: after a car accident paralyzed him from the chest down in 1982, he continued to record and tour.[130] Pendergrass had apparently executed a will that disinherited his wife and daughters and left all of his assets, including his valuable intellectual property rights, to his son, Teddy, Jr.[131] This instrument featured Pendergrass's initials, signatures from two witnesses, and a stamp from a notary public declaring that she had personally supervised the execution process.[132] It also included a discursive passage in which Pendergrass explained his estate plan:

> I have sent my son to college and have prepared him for the day of my passing. I know him to be a kind and just man . . . . I have also instructed him that in the event of my death he watch those around him very closely to see who was real and who was fake. . . . In the days when the bible was written the father would leave everything to his son to take care of the land and this is my wish.[133]

128. *See* David Horton, *Partial Harmless Error for Wills: Evidence from California*, 103 IOWA L. REV. 2027, 2058, 2061 (2018).

129. *In re* Estate of Pendergrass, No. 2010-X0189, 2014 WL 11201432, at *1 (Pa. Ct. Com. Pl. Oct. 14, 2014); Tom Huizenga, *Teddy Pendergrass Dies at 59*, NPR (Jan. 14, 2010, 10:19 AM), https://www.npr.org/templates/story/story.php?storyId=122563163 [https://perma.cc/KMG9-Q3BE].

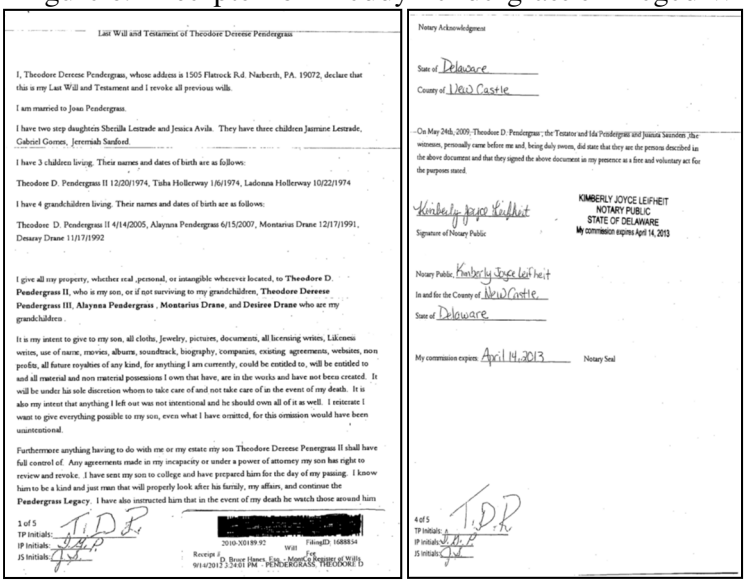
130. *See In re Pendergrass*, 2014 WL 11201432, at *1.

131. *See id.*

132. *See id.* at *11.

133. Last Will and Testament of Theodore DeReese Pendergrass at 1–2 (May 24, 2009) (on file with authors).

Figure 6: Excerpts from Teddy Pendergrass's Alleged Will[134]



Last Will and Testament of Theodore Dereese Pendergrass

I, Theodore Dereese Pendergrass, whose address is 1505 Flatrock Rd. Narberth, PA. 19072, declare that this is my Last Will and Testament and I revoke all previous wills.

I am married to Joan Pendergrass.

I have two step daughtein Sherilla Lestrade and Jessica Avila. They have three children Jasmine Lestrade, Gabriel Gomes, Jeremiah Sanford.

I have 3 children living. Their names and dates of birth are as follows:

Theodore D. Pendergrass II 12/20/1974, Tisha Hollerway 1/6/1974, Ladonna Hollerway 10/22/1974

I have 4 grandchildren living. Their names and dates of birth are as follows:

Theodore D. Pendergrass II 4/14/2005, Alaynna Pendergrass 6/15/2007, Montarius Drane 12/17/1991, Desarey Drane 11/17/1992

I give all my property, whether real ,personal, or intangible wherever located, to **Theodore D. Pendergrass II**, who is my son, or if not surviving to my grandchildren, **Theodore Dereese Pendergrass III, Alaynna Pendergrass , Montarius Drane**, and **Desiree Drane** who are my grandchildren .

It is my intent to give to my son, all cloths, Jewelry, pictures, documents, all licensing writes, Likeness writes, use of name, movies, albums, soundtrack, biography, companies, existing agreements, websites, non profits, all future royalties of any kind, for anything I am currently, could be entitled to, will be entitled to and all material and non material possessions I own that have, are in the works and have not been created. It will be under his sole discretion whom to take care of and not take care of in the event of my death. It is also my intent that anything I left out was not intentional and he should own all of it as well. I reiterate I want to give everything possible to my son, even what I have omitted, for this omission would have been unintentional.

Furthermore anything having to do with me or my estate my son Theodore Dereese Penergrass II shall have full control of. Any agreements made in my incapacity or under a power of attorney my son has right to review and revoke. I have sent my son to college and have prepared him for the day of my passing. I know him to be a kind and just man that will properly look after his family, my affairs, and continue the **Pendergrass Legacy**. I have also instructed him that in the event of my death he watch chose around him

1 of 5
TP Initials: T.D.P.
IP Initials: T.D.P.
JS Initials: J.S.

[redacted]
2010-X01893.92 Will FilingID: 16888834
Receipt # D. Bruce Hawes, Esq. - Montgomery Register of Wills
9/14/2012 2:24:01 PM - PENDERGRASS, THEODORE D

Notary Acknowledgment

State of Delaware
County of New Castle

On May 24th, 2009, Theodore D. Pendergrass ; the Testator and Ida Pendergrass and Joanna Saunders ,the witnesses, personally came before me and, being duly sworn, did state that they are the persons described in the above document and that they signed the above document in my presence as a free and voluntary act for the purposes stated.

Kimberly Joyce Leifheit
Signature of Notary Public

KIMBERLY JOYCE LEIFHEIT
NOTARY PUBLIC
STATE OF DELAWARE
My commission expires April 14, 2013

Notary Public Kimberly Joyce Leifheit
In and for the County of New Castle
State of Delaware

My commission expires: April 14, 2013 Notary Seal

4 of 5
TP Initials: T.D.P.
IP Initials: T.D.P.
JS Initials: J.S.

Ironically, this writing—with its biblical reference and condemnation of "fake" people—was itself phony. Teddy, Jr., his mother-in-law, and the notary testified under oath that Pendergrass had initialed the will in a van outside of the notary's office on May 24, 2009.[135] But notes from the nurses who cared for Pendergrass established that he had not left his house on that date.[136] Consequently, the Pennsylvania Court of Common Pleas held that the proponents of the will had perjured themselves and that their "entire case was a fabrication."[137] The court was particularly troubled by the notary's involvement, remarking that "[w]hy [she] would lie under oath is a mystery."[138]

134. *Id.* at 1, 4.

135. *In re Pendergrass*, 2014 WL 11201432, at *10–12.

136. *Id.* at *1–2.

137. *Id.* at *15.

138. *Id.* For another case involving a dishonest notary, see *Estate of Konjolka v. Brown* (*In re* Estate of Konjolka), No. 1664 WDA 2015, 2017 WL 2704070, at *1 (Pa. Super. Ct. June 22, 2017) ("Conveniently, [the Notary Public's] notary log was 'destroyed in a fire' and he did not produce any evidence of payment. The Court finds the loss of the notary log book to be dubious and the $100 payment for a single notary act to be extraordinary; thus, [the Notary Public's] testimony was questionable."); *see also* Vieira v. Vieira, No. CV020172366S, 2004 WL 2361556, at *3, *5 (Conn. Super. Ct. Sept. 14, 2004) (holding a notarized will set aside as a forgery); *In re* Estate of Tinley, No. CIV.A. 1318-K, 2001 WL 765177, at *2, *9 (Del. Ch. June 26, 2001) (same), *aff'd sub*

Second, the burden of proof in will-forgery cases remains hazy. As noted, the same question—whether the testator signed the will—is both part of the proponent's efforts to show compliance with the Wills Act and the core of the contestant's case.[139] Whereas the Wills Act establishes a bright-line rule for the proponent to prove due execution, the contestant's burden of proof for forgery is neither well-defined nor consistently applied. Most states place the onus on the challenger to rebut the proponent's *prima facie* showing of due execution.[140] And courts usually require the contestant to prove forgery by clear and convincing evidence.[141] Yet it is unclear exactly what kinds of suspicious circumstances suffice to shift the burden back to the proponent. For example, in a 1983 Tennessee case, the contestant introduced forensic expert testimony that called into question certain pencil markings on the will.[142] Because the will's physical condition was dubious enough "to excite suspicion," the court held that the contestant had rebutted the validity presumption, and that the proponent faced "the burden of removing the suspicion or [sic] forgery or alteration."[143] More recently, however, another Tennessee appellate panel applied the same "excite suspicion" standard to affirm the

nom. Tinley v. Pleasanton, 791 A.2d 751 (Del. 2002) (unpublished table decision); Waters v. Iverson (*In re* Estate of Waters), No. 1–13–262, 2014 WL 4402826, at *1 (Ill. Ct. App. 2014) (same); *In re* Estate of Cruciani, 986 A.2d 853, 855–56 (Pa. Super. Ct. 2009) (same).

139. *See supra* notes 79–83 and accompanying text.

140. *See, e.g.*, Anderton v. Latham, 342 So. 2d 779, 780 (Ala. 1977) ("It is the duty of the contestants . . . to offer evidence to satisfy the court that the testator did not sign the instrument . . . ."); *In re* Will of DiScala, 500 N.Y.S.2d 976, 978 (Sur. Ct. 1986) ("The objectant pleaded forgery and has the burden of proof upon this issue."). In some states, a key distinction is whether the will has already been admitted to probate when the contestant files her forgery claim. *See* Curtis v. Curtis, 481 F.2d 549, 551 (D.C. Cir. 1973) ("[O]nce a will has been admitted to probate, the ultimate burden of persuasion even as to execution rests on the caveator."); Succession of Acheé, 229 So. 3d 5, 8 (La. Ct. App. 2017) (noting that the contestant bears the burden "unless the action was instituted within three months of the date the testament was probated"); *In re* Estate of Zerboni, 556 S.W.3d 482, 486 (Tex. App. 2018) (holding that contestants "carr[y] the burden of proof on the issue of forgery on [an] already probated will").

141. *See, e.g.*, *In re Tinley*, 2001 WL 765177, at *2; *In re* Estate of Field, 414 P.3d 1217, 1221 (Kan. Ct. App. 2018); Slack v. Truitt, 791 A.2d 129, 133 (Md. 2002); Kita v. Matuszak, 222 N.W.2d 216, 221 (Mich. Ct. App. 1974); Bryant v. Bryant, 856 N.Y.S.2d 22 (Sur. Ct. 2007), 2007 WL 4458189, at *3 (unpublished table decision); *In re* Estate of Luongo, 823 A.2d 942, 967 (Pa. Super. Ct. 2003).

142. Coates v. Thompson, 666 S.W.2d 69, 73 (Tenn. Ct. App. 1983); *see also* Haynes v. Mullins, 209 S.W.2d 278, 279 (Tenn. Ct. App. 1947) (holding that suspicious circumstances existed when there was evidence that the witnesses' names had been added after the will had been submitted to probate and the testator's signature appeared to be traced).

143. *Coates*, 666 S.W.2d at 75 (quoting the lower court's jury instruction) (remanding for a new trial because the lower court improperly excluded the proponent's rebuttal evidence).

probate of a will that misspelled the testator's name and was riddled with strange staple holes.[144] Despite similar circumstances, the results were inconsistent.

Adding to the confusion, there is conflicting authority on whether judges can look beyond the instrument's four corners when ruling on the threshold question of due execution. For example, in *In re Estate of Field*, which was mentioned in the Introduction, a Kansas appellate panel held that the proponent did not need to authenticate the signatures on the codicil even though she had a history of dishonesty, she had created and shredded drafts of the instrument, and the witnesses had died in a murder-suicide after being interviewed by the FBI.[145] The court explained that the contestant should bear the burden of rebutting the validity presumption "where nothing *on the face of the document* raises . . . suspicion."[146] In another recent case in New York, the trial court granted summary judgment upholding a will that, like the codicil in *Field*, appeared on its face to contain all necessary signatures.[147] But on appeal, the New York Supreme Court Appellate Division took the opposite approach to the threshold authentication rule applied in *Field*, and reversed based on extrinsic evidence of forgery, including proof of "the decedent's physical inability to execute documents before and following the date [she] allegedly executed the will."[148] The unsettled scope of judicial review at this threshold stage is pivotal because, if suspicious circumstances prevent the proponent from establishing due execution, no presumption of validity attaches,

144. *In re* Estate of Link, 542 S.W.3d 438, 459–60 (Tenn. Ct. App. 2017) (quoting *Haynes*, 209 S.W.2d at 279). In *Link*, the contestants claimed "that multiple sets of staple holes in Ms. Link's 1998 will, a misspelling of Ms. Link's name in the attached affidavit, and the fact that Article II of the will has a subsection 'A' and no subsection 'B'" were "similar indicators of forgery," comparable to those in *Haynes*, "such that the burden of proof remained on [the alleged forger] to remove the suspicion that Ms. Link's 1998 will was forged." *Id.* The *Link* court disagreed but did not explain why *Haynes* was distinguishable. *Id.* at 460 ("We disagree. None of those features 'excites suspicion' that the will was forged or altered.").

145. *In re Field*, 414 P.3d at 1228, 1233–34; *see also supra* notes 1–15 and accompanying text.

146. *In re Field*, 414 P.3d at 1224 (emphasis added). The court noted that the Wills Act could easily be interpreted to require the proponent "to show the genuineness of [the testator's] signature." *Id.* However, the court opted to treat forgery like fraud and undue influence by assigning the burden to the challenger so long as a document *seems* to satisfy the execution formalities. *See id.* ("[T]he better practice is to shift to the will contestant the burden of showing the invalidity of a competent testator's signature at the end of a testamentary document witnessed by two persons.").

147. *In re* Estate of Greene, 932 N.Y.S.2d 544, 545 (App. Div. 2011).

148. *Id.* at 546.

and the contestant may be spared the burden of contesting the will altogether.

Third, forgery cases hinge on the shaky "science" of forensic handwriting analysis. Forensic expert witnesses use techniques such as "infra-red light that can reveal whether multiple inks are present on a document" and "[h]igh-powered microscopes [that can] detect whether a writer stopped and started a lot during a signature."[149] However, there is no concrete proof that these methods are reliable.[150] In fact, the few studies that exist show that examiners were only able to correctly identify whether two exemplars had been written by the same person 36 percent of the time.[151] Thus, evidence scholars have long condemned the judicial practice of qualifying handwriting specialists as experts based on "little more than their assertions of expertise."[152]

Despite these critiques, forgery contestants virtually never prevail unless they attack the authenticity of the testator's signature through expert testimony.[153] The Alameda County probate records bring this point to the fore. For example, the only forgery challenger in the

149. Dale, *supra* note 101. To be certified by the American Board of Forensic Document Examiners, an analyst must complete two years of training and learn "how to differentiate between retouching indicative of forgery and similar markings found in genuine signatures." AM. BD. OF FORENSIC DOCUMENT EXAM'RS, OBJECTIVES FOR TRAINING 2, 10 (Oct. 21, 2010), https://www.abfde.org/htdocs/certification/ObjectivesforTraining.pdf [https://perma.cc/5KAP-ZMVS].

150. *See, e.g.*, D. Michael Risinger, Mark P. Denbeaux & Michael J. Saks, *Exorcism of Ignorance as a Proxy for Rational Knowledge: The Lessons of Handwriting Identification "Expertise,"* 137 U. PA. L. REV. 731, 738–39 (1989) ("From the perspective of published empirical verification, handwriting identification expertise is almost nonexistent.").

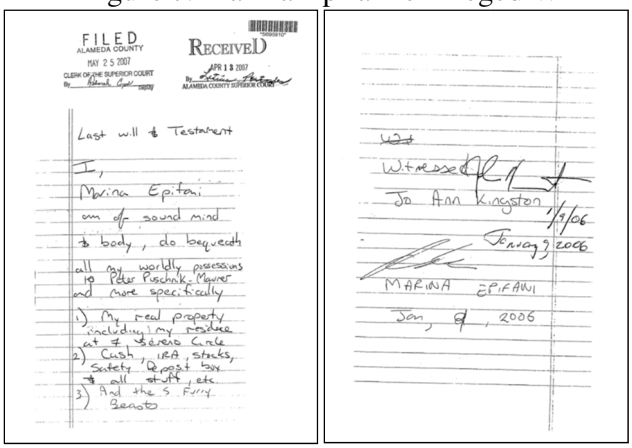
151. *Id.* at 747–48.

152. D. Michael Risinger & Michael J. Saks, *Science and Nonscience in the Courts:* Daubert *Meets Handwriting Identification Expertise*, 82 IOWA L. REV. 21, 65 (1996); *see* Roger C. Park, *Signature Identification in the Light of Science and Experience*, 59 HASTINGS L.J. 1101, 1145 (2008) ("[T]estimony on signature authentication should be admitted, subject to strict procedural limits."). Given the vagueness of the field and its guiding principles, it is not surprising that fact finders are usually forced to choose among dueling and equally plausible conclusions. *See, e.g.*, Angelucci v. Aglialoro, No. A-0369-14T2, 2016 WL 854452, at *2 (N.J. Super. Ct. App. Div. Mar. 7, 2016) ("The judge . . . found that the testimony of plaintiffs' handwriting expert asserting forgery was not more convincing than the divergent opinion of defendant's expert who found the authenticity of [the testator's] signature to be inconclusive."). This raises the stakes on how courts allocate the burdens of proof and persuasion: when evidence of forgery is inconclusive, the party who owes these obligations loses.

153. *See, e.g.*, *In re* Estate of Rothberg, No. 2391 EDA 2014, 2015 WL 6954970, at *22 (Pa. Super. Ct. June 26, 2015) (holding that the contestants failed to prove forgery when they "produced no expert evidence as to the handwriting of the decedent or the possibility that the decedent's signature . . . was produced by some kind of forgery").

dataset who lost at trial unwisely attempted to impeach the testator's signature through her own testimony rather than a handwriting expert.[154] In another case, *In re Estate of Epifani*,[155] the testator allegedly handwrote a two-page will that featured her name twice: once at the beginning of the document and then again at the end.[156] Under settled California law, either inscription could serve as a "signature."[157] The contestant's forensic expert testified that the *second* signature was forged, but forgot to mention the *first* signature.[158] Because the proponent could point to at least one facially genuine signature that remained unchallenged by the contestant's handwriting expert—despite evidence that the other signature had been forged—he moved for summary judgment and obtained a quick settlement.[159]

Figure 7: Marina Epifani's Alleged Will[160]



154. *See* Minutes at 1–2, *In re* Estate of Morris, No. RP09450940 (Cal. Super. Ct. Sept. 1, 2009) (on file with authors) (summarizing a forgery trial in which both parties called lay witnesses and the judge ruled that "there is more than sufficient evidence that the will is authentic").

155. *In re* Estate of Epifani, No. RP07327771 (Cal. Super. Ct. Mar. 25, 2011).

156. *See* Last Will and Testament at 1–2, *In re Epifani*, No. RP07327771 (on file with authors) [hereinafter *Epifani* Last Will and Testament].

157. *See, e.g.*, Cox v. Towle (*In re* Estate of Williams), 66 Cal. Rptr. 3d 34, 44 (Ct. App. 2007) (holding that testator's name written at the top of a holographic will was a "signature").

158. *See* Notice of Motion and Motion of Petitioner Peter Puschnik-Maurer for Summary Judgment on Giulia Massari's Contest of Will at 1–2, *In re Epifani*, No. RP07327771 (on file with authors).

159. *See* Preliminary Distribution at 1, *In re Epifani*, No. RP07327771 (on file with authors); Petitioner/Respondent's Settlement Conference Statement at 2–3, *In re Epifani*, No. RP07327771 (on file with authors) (arguing that "the [c]ontestant's own expert has opined under penalty of perjury that . . . the [d]ecedent wrote her name on the front side of the document").

160. *Epifani* Last Will and Testament, *supra* note 156, at 1–2.

Fourth, will-forgery litigation can generate enormous expenses that a prevailing contestant may never recover from a defeated proponent. Some courts have imposed tort liability for malicious prosecution,[161] but the cost of pursuing further relief after a successful lawsuit can easily outweigh the damages recoverable against a judgment-proof forger. For example, in *In re Estate of Pendergrass*,[162] the contestants spent $850,000 in legal fees to set aside the late singer's forged will in probate court.[163] These individuals are now suing Teddy, Jr., the forger, in federal court for wrongful use of civil proceedings,[164] although it remains to be seen whether Teddy, Jr., will have sufficient assets to pay damages if he loses. Fee-shifting statutes can also pose risks to contestants. Recall that in *Field*, even after FHSU invalidated the forged codicil, the trial court granted $1 million in attorney fees to Oborny, the proponent, upon finding that she had "uttered" the phony document in "good faith."[165] This award was reversed on appeal, but FHSU only narrowly avoided subsidizing Oborny's lawsuit in addition to paying its own legal costs.[166]

To conclude, lawmakers and commentators have underestimated the frequency of disputes over forged wills. In addition, this lack of attention has created several festering areas of doctrinal uncertainty.

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161. *See* Steiner v. Eikerling, 226 Cal. Rptr. 694, 698 (Ct. App. 1986) ("[P]ersons who successfully contest a forged will submitted to probate may maintain an action for malicious institution of civil proceedings against those who offered the forged document with knowledge of its falsity."); First Nat'l Bank of Mayfield v. Gardner, 376 S.W.2d 311, 314 (Ky. 1964) (recognizing a cause of action against a party who had forged a codicil).

162. *In re* Estate of Pendergrass, No. 2010-X0189, 2014 WL 11201432 (Pa. Ct. Com. Pl. Oct. 14, 2014).

163. Complaint at 10, Pendergrass v. Pendergrass, No. 2:18-cv-00478-CMR (E.D. Pa. Feb. 6, 2018).

164. *Id.* at 11.

165. *In re* Estate of Field, 414 P.3d 1217, 1234 (Kan. Ct. App. 2018). Likewise, in the headline-grabbing case of business mogul Howard Hughes's estate, a Nevada jury spent seven months trying to determine the authenticity of a mysterious will. *Jury Finds So Called Mormon Will of Hughes a Fake*, N.Y. TIMES, June 9, 1978, at A10. The proponent was a stranger who claimed to have assisted Hughes after finding him lying alone and disoriented in the Utah desert. *Id.* The jury, which ultimately found the document to be a forgery, heard "testimony from 69 witnesses, including 11 handwriting analysts who gave contradictory opinions and saw more than 700 exhibits and 480 copies of Mr. Hughes's handwriting." *Id.* The litigation proved expensive for both sides: in addition to the estate's substantial cost of bringing the contest, the proponent's lawyers personally invested $500,000 of their own money to pay for the litigation, which they were unable to recover. Marlene Adler Marks, *Where There's a Will . . .* , NAT'L L.J., Jan. 5, 1981, at 1.

166. *In re Field*, 414 P.3d at 1235; *see also In re* Estate of Folcher, 135 A.3d 128, 138 (N.J. 2016) (holding that a contestant who prevailed in proving forgery could not recover attorney's fees from the forger).

And as is discussed in the next Section, forgery has also spread to other legal instruments.

B. Deeds

Deed forgery has also received little attention from lawmakers and commentators. Yet this Section reveals that there has been a surge of bogus transfers of homes. For example, Table 2 in the Appendix presents twenty-nine reported opinions since 2000 in which the true owner of real property challenged a deed on forgery grounds.[167] Moreover, reporters across the country have documented dozens of additional cases that never find their way into the court system.[168] Most importantly for the purposes of this Article, these cases and stories share a common thread: deed forgers tend to prey on property that is owned by a decedent's estate.

A primer on real estate transfers can help frame the following discussion. Dishonest owners can sell land multiple times to different parties. Suppose O deeds Blackacre to A and then again to B. Under the ancient doctrine of "prior in time, higher in right,"[169] the first taker, A, is entitled to the parcel.[170] But this would be unjust if B reasonably relied on O's false claims of ownership. Thus, to minimize the risk of fraud, every jurisdiction has passed a Recording Act.[171] These statutes establish a local governmental office—the "Deed Register"—where owners of real property must file deeds.[172] By making information

167. In twenty-two of the twenty-nine decisions, courts concluded that the deed was a forgery. In the remaining seven cases, courts found a triable issue of fact or probable cause on the forgery count.

168. *See infra* notes 177–79.

169. Francis S. Philbrick, *Limits of Record Search and Therefore of Notice, Part I*, 93 U. PA. L. REV. 125, 139 (1944).

170. *See, e.g.*, Taylor Mattis, *Recording Acts: Anachronistic Reliance*, 25 REAL PROP., PROB. & TR. J. 17, 19 (1990).

171. *See, e.g.*, ROBIN PAUL MALLOY & JAMES CHARLES SMITH, REAL ESTATE TRANSACTIONS: PROBLEMS, CASES, AND MATERIALS 259 (5th ed. 2017). Recording Acts were also designed to replace the antiquated land-transfer process known as "livery of seisin." Philbrick, *supra* note 169, at 137–39 (providing historical context for the emergence of alternative legal processes for conveying property unassociated with "ceremony"). The first Recording Act in America was passed in Massachusetts in 1640. *See* RUFFORD G. PATTON & CARROLL G. PATTON, PATTON ON LAND TITLES § 8 & n.95 (2d ed. 1957).

172. Whether Recording Acts impose a mandatory duty to file deeds, mortgages, and other similar instruments remains unclear. *Compare* Union Cty. v. MERSCORP, Inc., 735 F.3d 730, 733–34 (7th Cir. 2013) ("Recording is a valuable service, provided usually for a modest fee—but provided only to those who think the service worth the fee."), *with* Montgomery Cty. v. MERSCORP, Inc., 904 F. Supp. 2d 436, 443 (E.D. Pa. 2012) ("We predict that the Pennsylvania

about ownership publicly available, Recording Acts "prevent persons owning lands from selling them more than once."[173]

In the last decade, a growing number of con artists realized that a system designed to discourage fraud *by* landowners actually facilitates fraud *against* landowners. To cloak one's self with apparent ownership, one must simply record a fake deed, a step that is shockingly easy. Other than a cursory review to determine whether a deed seems to satisfy the "essential elements" of a conveyance—usually the grantor's signature and sometimes approval by a notary[174]—the overwhelming majority of Deed Registers do not try to authenticate legal instruments.[175] In fact, because Deed Register clerks are merely "ministerial officers," many states expressly *prohibit* them from "pass[ing] upon the validity" of deeds that seem superficially valid.[176]

Supreme Court would conclude that the statute does make recording of conveyances compulsory . . . .").

173. Fox v. Sizeland, 9 N.Y.S.2d 350, 360 (Sup. Ct. 1938); *see also* Jackson v. Post, 15 Wend. 588, 594 (N.Y. Sup. Ct. 1836) ("The object of the [R]ecording [A]cts is to prevent frauds—to prevent the person having title to land from selling it more than once, and thereby defrauding one or more of the purchasers."). Recording Acts also accomplish other objectives, such as allowing "public officials such as tax collectors[] to ascertain apparent ownership of land." Corwin W. Johnson, *Purpose and Scope of Recording Statutes*, 47 IOWA L. REV. 231, 231 (1962).

174. *See, e.g.*, Curry v. Curry, 473 S.E.2d 760, 762 (Ga. 1996) ("Among the essential elements of a deed are a written instrument, description identifying the land, [and the] grantor's signature . . . ."); Celtic Corp. v. Tinnea, 254 S.W.3d 137, 142 (Mo. Ct. App. 2008) (listing similar "essential elements of a deed" (quoting Gregg v. Georgacopoulos, 990 S.W.2d 120, 123 (Mo. Ct. App. 1999))).

175. *See* Eli Segall, *Woman Claims Ownership of Dead Woman's House in Las Vegas*, LAS VEGAS REV.-J. (Mar. 3, 2018, 11:10 AM), https://www.reviewjournal.com/business/housing/woman-claims-ownership-of-dead-womans-house-in-las-vegas [https://perma.cc/WJ5D-WMWA] (noting that in Clark County, Nevada, the recorder's office is "not required to check the documents' veracity").

176. Dancy v. Clark, 24 App. D.C. 487, 499 (D.C. Cir. 1905); *see also* Woodward v. Bowers, 630 F. Supp. 1205, 1207 (M.D. Pa. 1986) ("[T]he statutes . . . mandat[e] that the Recorder record all deeds . . . that are properly acknowledged, regardless of their contents or validity."); Smith v. Cty. of Alameda, No. A149228, 2017 WL 5591467, at *1 (Cal. Ct. App. Nov. 21, 2017) ("[A] county recorder may not refuse to record an instrument 'on the basis of its lack of legal sufficiency.'" (quoting Smith v. Cty. of Alameda, No A142436, 2015 Cal. App. Unpub. LEXIS 2297, at *9 (Cal. Ct. App. Mar. 30, 2015))); Sacerdotte v. Duralde, 1 La. 482, 486 (1830) ("The recorder . . . has no discretion to exercise as to the validity or effect of the acts recorded."); Ondra v. Bardella, No. 2012-7441, 2013 WL 10545384, at *1 (Pa. Ct. Com. Pl. Sept. 16, 2013) (holding that a deed recorder lacked "discretion to reject documents based on their perceived legal deficiency, and 'is truly just a "custodian" of documents'"); Bionomic Church of R.I. v. Gerardi, 414 A.2d 474, 476 (R.I. 1980) ("[A] recorder of deeds is a purely ministerial officer who, when presented with a deed executed in compliance with controlling statutes, must receive and record the instrument."). *But see* State *ex rel.* Data Trace Info. Servs., L.L.C. v. Cuyahoga Cty. Fiscal Officer, 963 N.E.2d 1288, 1296 (Ohio 2012) ("[C]ounty recorders, within their discretion, [may]

The upside of this system is that deeds can be recorded quickly. The downside is that "anyone can file papers . . . to take ownership of a house."[177] To exploit this practice, wrongdoers began to record fake deeds and then sell the stolen properties.[178]

The main obstacle to this scheme was not legal; it was practical. Although it was easy to obtain a fraudulent title, it was harder to convince would-be purchasers that stolen property was primed for sale; most buyers want to see a residence before purchasing it. However, forgers cannot gain entry to occupied homes without trespassing on the property or arousing the owner's suspicion. Thus, deed fraud flourished during the foreclosure crisis, when forgers preyed upon the vast inventory of abandoned houses.[179]

When the real estate market recovered, forgers discovered another soft target: vacant real estate owned by the recently deceased.[180] Forgers learned to exploit the typical delay that accompanies the transfer of inherited property from the dead to the living. Land often must march through probate, which can take several years.[181] In addition, heirs and beneficiaries frequently live far away and cannot actively monitor the parcel. In turn, when a house is vacant and unattended, neither the counterfeit deed nor the trespasser is likely

'refuse to record an instrument of writing [if] . . . the recorder has reasonable cause to believe the instrument is materially false or fraudulent.'" (quoting OHIO REV. CODE ANN. § 317.13(B)).

177. Segall, *supra* note 175; *see also* Lise Olsen, *Homes Illegally Taken and Sold in Scam*, HOUS. CHRON. (May 9, 2011, 5:30 AM), https://www.chron.com/news/houston-texas/article/Homes-illegally-taken-and-sold-in-scam-1619420.php [https://perma.cc/T23W-CETJ] ("In Texas, anyone can file a property transfer record or ownership claim without providing ID or other proof.").

178. *See, e.g.*, Chris Stewart, *Prosecutor: Local Man Stole Homes from the Old—And the Dead*, DAYTON DAILY NEWS (July 2, 2018 9:46 PM), https://www.daytondailynews.com/news/prosecutor-local-man-stole-homes-from-the-old-and-the-dead/Ll1ddRQRyBAXZwMULjTrFL [https://perma.cc/D63A-QC2P] (explaining that after a con artist "had established 'ownership' of the subject properties, he would then try to sell those properties to unsuspecting buyers").

179. *See* Susan Taylor Martin, *Housing Scam: Rise of Fraudulent Deeds Throws Wrench into Home Ownership*, TAMPA BAY TIMES (Nov. 25, 2017), https://www.tampabay.com/news/business/realestate/Housing-scam-Rise-of-fraudulent-deeds-throws-wrench-into-home-ownership_162676364 [https://perma.cc/3EPQ-ZXT5] ("Typically, deed scams occur with houses that are unoccupied because they are in foreclosure or the owner has died.").

180. *See id.*; Manhattan Grand Jury Report, *supra* note 50, at 7–8 ("A fraudster can identify vulnerable properties in various ways, for example, by scouring obituaries for recently deceased owners . . . .").

181. *See, e.g.*, David Horton, *In Partial Defense of Probate: Evidence from Alameda County, California*, 103 GEO. L.J. 605, 648 (2015) (finding that the mean length of a probate case in one California county was 507 days).

to be detected right away. This is partly because any notice sent to the vacant property is more likely to be intercepted by the forger than the estate's fiduciary. Moreover, although prospective purchasers can protect themselves against title theft by checking the Deed Register, existing owners usually assume they have no reason to investigate title to *their own property*. In fact, throughout the last decade, the media have reported a rash of counterfeit deeds of land owned by decedents in Boston,[182] Dayton,[183] Denver,[184] Detroit,[185] Houston,[186] Kansas City,[187] Las Vegas,[188] Miami,[189] and Tampa.[190]

Although local authorities have taken countermeasures, estate-related deed fraud has proven resilient. Some cities and counties have created notification systems that send owners a letter, text, or email "in the event that one or more [deed-related documents] has been recorded against [their] property."[191] However, these programs are

182. *See* Collin Binkley, *Former MIT Prof Who Staged Shooting Now Accused of Forgery*, BOS. GLOBE (Dec. 28, 2017), https://www.boston.com/news/local-news/2017/12/28/former-mit-prof-who-staged-shooting-now-accused-of-forgery [https://perma.cc/44V4-NE8K].

183. *See* Stewart, *supra* note 178.

184. *See* David Olinger, *Denver Judge Finds Fraud in Sale of Dead Man's House*, DENV. POST (Aug. 29, 2013, 11:43 AM), https://www.denverpost.com/2013/08/29/denver-judge-finds-fraud-in-sale-of-dead-mans-house [https://perma.cc/2GM3-VJWS].

185. *See* Eric. D. Lawrence, *Pair To Be Sentenced in Fake-Property Sales Scam*, DET. FREE PRESS (Mar. 24, 2016, 7:53 PM), https://www.freep.com/story/news/local/michigan/detroit/2016/03/24/pair-guilty-mortgage-scam-detroit/82208454 [https://perma.cc/95WN-NND5].

186. *See* Olsen, *supra* note 177.

187. *See* Ryan Kath, *Prompted by 41 Action News Investigation, Missouri Lawmakers Try To Prevent Real Estate Fraud*, 41 KSHB KAN. CITY (Apr. 24, 2014, 6:39 PM), https://www.kshb.com/news/local-news/investigations/investigation-uncovers-apparent-real-estate-scheme-including-forged-signatures-of-dead-people?page=2 [https://perma.cc/R6RM-MVLS].

188. *See* Segall, *supra* note 175.

189. *See* Anne Geggis & Wayne K. Roustan, *Seven Accused of Taking Homes Worth $12 Million from the Living and the Dead*, SUN-SENTINEL (May 9, 2018, 5:35 PM), http://www.sun-sentinel.com/local/broward/fl-sb-operation-tomb-raider-broward-20180509-story.html [https://perma.cc/W5NV-HRSD].

190. *See* Martin, *supra* note 179.

191. N.Y.C., N.Y., RULES, tit. 19 § 43-02(b) (2018); *see also* Erik Larsen, *Ocean County Clerk Combats Mortgage Fraudsters and Other Real Estate Swindlers*, ASBURY PARK PRESS (Aug. 25, 2018, 9:16 PM), https://www.app.com/story/news/local/ocean-county/government/2018/08/25/ocean-county-clerk-combats-mortgage-fraudsters-and-land-swindlers/1099411002 [https://perma.cc/U48S-HA2U] (profiling a county official "encouraging property owners . . . to sign up for free automated email alerts"); Lisa Parker, *Loophole Helps Criminals File Fraudulent Deeds*, NBC CHI. (Nov. 20, 2013, 6:50 AM), https://www.nbcchicago.com/news/local/Loophole-Helps-Criminals-File-Fraudulent-Deeds-232444821.html [https://perma.cc/V2K8-MYUG] ("Cook and DuPage [counties] now offer a free property fraud alert system, which notifies a registered homeowner if any activity is recorded on their property account."); Stewart, *supra* note 178

voluntary, and, from the limited publicly available data, it appears that enrollment has been low. For example, in the two years since Hillsborough County, Florida, adopted such a regime, only 2,167 of the region's 590,779 residential properties have opted in.[192] Moreover, these alerts do little to discourage deed forgeries that are recorded *after* the owner's death. The parties who need to know about a new filing against estate-owned property—the decedent's personal representative and successors-in-interest—are unlikely to receive warnings sent by email or text to the decedent. Consequently, despite New York City's notification system, police still received 755 complaints about deed forgery—often involving owners who are "dead and appear[] to have no heirs"—in one recent ten-month span.[193] In South Florida, forged conveyances are so often linked to estates that the sheriff's office dubbed its efforts to combat deed fraud "Operation Tomb Raider."[194]

Counterfeit deeds can inflict serious harm on a deceased owner's heirs or beneficiaries. To be sure, these instruments are absolutely void, so a victim can recover title even from legitimate downstream purchasers.[195] But untangling these legal knots can be time-consuming and expensive. Anecdotal evidence suggests that legal fees alone can range up to $100,000.[196] And in yet another aspect of financial harm

("Those enrolling [in the Fraud Alert Notification System] can opt to receive an email, a letter or both whenever a deed, a mortgage or a lien is filed on parcels enrolled . . . .").

192. Martin, *supra* note 179. For statistics on the county's housing stock, see *QuickFacts, Hillsborough County, Florida*, U.S. CENSUS BUREAU, https://www.census.gov/quickfacts/fact/table/hillsboroughcountyflorida/PST120217 [https://perma.cc/DB6R-NX89].

193. James Fanelli & Gustavo Solis, *Family Says Its $1.5 Million Brownstone Was Stolen in Deed-Theft Scam*, DNAINFO (May 12, 2015, 7:35 AM), https://www.dnainfo.com/new-york/20150512/hamilton-heights/family-says-their-15-million-brownstone-was-stolen-deed-theft-scam [https://perma.cc/7NLL-9QS6].

194. Geggis & Roustan, *supra* note 189.

195. *See, e.g.*, Wutzke v. Bill Reid Painting Serv., Inc., 198 Cal. Rptr. 418, 423 (Ct. App. 1984) ("It has been uniformly established that a forged document is void *ab initio* and constitutes a nullity . . . ."); Aurora Loan Servs., LLC v. Veatch, 710 S.E.2d 744, 745 (Ga. 2011) ("[A] forged deed is a nullity and vests no title in a grantee." (alternation in original) (quoting Brock v. Yale Mortg. Corp., 700 S.E.2d 583, 586 (Ga. 2010)); Faison v. Lewis, 32 N.E.3d 400, 403 (N.Y. 2015) (noting that a forged deed "holds a unique position in the law; a legal nullity at its creation is never entitled to legal effect because '[v]oid things are as no things'" (alteration in original) (quoting Marden v. Dorthy, 54 N.E. 726, 731 (N.Y. 1899))).

196. *See supra* notes 17–24 and accompanying text (describing a deed forgery in New York where the heir ended up paying $100,000 in attorneys' expenses); *cf.* Manhattan Grand Jury Report, *supra* note 50, at 31 ("[R]eclaiming residential real estate is complex, can take several years, and can be prohibitively expensive."); Stewart, *supra* note 178 (estimating that the cost could range from $2,500 to $3,000 in simple matters).

suffered by heirs and beneficiaries, the burden of proof in deed-forgery cases contributes to the high cost of title recovery. When a deed is accompanied by a certificate of acknowledgment—a simple paragraph that is often signed by a notary[197]—courts presume due execution, meaning a contestant must prove forgery by clear and convincing evidence.[198] As one court explained, "[a] certificate of acknowledgment should not be overthrown upon evidence of a doubtful character, . . . but only on proof so clear and convincing as to amount to a moral certainty."[199] This rule favors forgers by setting a low threshold for obtaining this validity presumption and imposing a high bar on contestants to prove forgery. This asymmetrical burden may encourage contestants to settle meritorious but difficult-to-prove deed contests by paying off the forger.[200] If nothing else, it makes litigation more expensive. Given the fact that we unearthed no baseless challenges to deeds, it is unclear why the law should impose such a demanding standard.

Making matters worse, defrauded individuals can rarely recover for other losses arising from the forger's misconduct. For example, recall the plight of Jennifer Merin, which was mentioned in the Introduction.[201] Although Merin was ultimately able to evict Darrell Beatty—the man who had forged the deed to the house she inherited—she incurred thousands of dollars in property damage.[202] She sued the City of New York for negligence.[203] Unfortunately, the state trial court dismissed her complaint because the Register *could not have* rejected

197. A certificate of acknowledgement is much like a will's attestation clause or self-proving affidavit. *See, e.g.*, N.Y. REAL PROP. LAW § 309-a (McKinney 2019); *see also supra* note 84 and accompanying text; *infra* notes 256–59 and accompanying text (describing the certificate's legitimation purposes).

198. *See, e.g.*, *In re* Estate of Romano, 801 N.Y.S.2d 781 (Sur. Ct. June 29, 2005), 2005 WL 1553927, at *11 (unpublished table decision) ("[A] certificate of acknowledgment attached to a deed raises a presumption of due execution which can only be overcome with clear and convincing evidence.").

199. Osborne v. Zornberg, 792 N.Y.S.2d 183, 184 (App. Div. 2005) (quoting Albany Cty. Sav. Bank v. McCarty, 43 N.E. 427, 430 (N.Y. 1896)).

200. *See* Manhattan Grand Jury Report, *supra* note 50, at 9 ("Some diabolical criminals even commenced lawsuits against the legitimate owners, using it as an opportunity to extort payment from them in exchange for the return of the deed.").

201. *See supra* notes 17–24 and accompanying text.

202. *See Merin* Opposition Brief, *supra* note 18, at 6 (describing property damage including a broken garage door, a missing car, and personal items broken in a pile).

203. *See* Merin v. City of New York, No. 713069/15, 2016 WL 3454185, at *2 (N.Y. Sup. Ct. May 12, 2016) (providing relevant procedural history).

Beatty's bogus deed under the "ministerial function" doctrine noted above.[204]

In sum, homes owned by decedents are easy prey for deed forgery schemes that exploit the lack of authentication protocols among Deed Registers and the limited ability of absentee fiduciaries to monitor estate-owned property. As the following Section discusses, similar problems have emerged in the realm of life insurance.

C. Life Insurance Beneficiary Designations

The life insurance industry has grown exponentially since the dawn of the nonprobate revolution.[205] But as this Section explains, the most important component of life insurance policies—beneficiary designations—are especially prone to forgery.

Courts have routinely presided over claims that a life insurance form was falsified or fabricated. There have been at least twenty-one reported decisions on the topic since 2000. These opinions, which appear in Table 3 of our Appendix, reveal that in thirteen cases, courts either held that a beneficiary designation was counterfeit or found enough evidence to submit the allegation to the trier of fact.

Counterintuitively, life insurers face little pressure to deter forgery. Firms exploit two loopholes to avoid being penalized when they honor bogus beneficiary designations. The first are the rules of interpleading: the process by which a neutral third party, such as a bank or insurance company, is in possession of property and sues to compel the property's adverse claimants to resolve their conflict.[206] Because the "disinterested stakeholder"—the litigant who files an interpleader action—helps bring the matter to an efficient close, it can recover its attorneys' fees and costs.[207] When a life insurance company learns about forgery allegations *before* it has made any payments, it simply

204. *Id.*

205. *See supra* notes 119–20 and accompanying text.

206. *See* 28 U.S.C. § 1335 (2018) (providing the procedural obligations for interpleader); FED. R. CIV. P. 22 (same).

207. Stonebridge Life Ins. v. Kissinger, 89 F. Supp. 3d 622, 627 (D.N.J. 2015) (quoting Metro. Life Ins. v. Kubicheck, 83 F. App'x 425, 431 (3d Cir. 2003)); Banner Life Ins. v. Lukacin, Civ. A. No. 13-cv-6589 (CCC), 2014 WL 4724902, at *3 (D.N.J. Sept. 22, 2014); *see also* Pan-Am. Life Ins. of Am. v. Pinto, No. 05-22969-CIV, 2008 WL 2627708, at *4 (S.D. Fla. July 3, 2008) ("[C]osts and attorneys' fees are generally awarded, in the discretion of the court, to the plaintiff who initiates the interpleader as a mere disinterested stake holder.").

initiates an interpleader action, deposits the proceeds into the court, bows out of the case, and usually gets reimbursed for its efforts.[208]

Second, when an insurer receives notice about a forgery claim *after* it has paid the death benefit, it can invoke a "facility of payment" statute.[209] Facility-of-payment legislation shields insurers from damages so long as they both acted in good faith and released funds to the beneficiaries who are named on the policy.[210] These laws are designed to spare companies from a laborious investigation into whether their customers were competent or were unduly influenced when they changed beneficiaries.[211] Although insurers can often spot inauthentic signatures with relative ease, many courts have extended facility-of-payment statutes to allegations of forgery.[212] In this double-barreled way, insurers have insulated themselves from the consequences of being duped.

In fact, both the impleader rules and facility-of-payment statutes create perverse incentives for insurers to avoid scrutinizing death-beneficiary designations. In an impleader proceeding, the stakeholder

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208. *See, e.g.*, Sun Life Assurance Co. of Can. v. Sampson, 556 F.3d 6, 8–9 (1st Cir. 2009) (affirming district court's award of almost $16,000 in litigation costs to life insurance company in interpleader action); Life Ins. of N. Am. v. Eufracio, 25 F. Supp. 3d 1179, 1185 (N.D. Iowa 2014) (awarding life insurance company about $4,700); N.Y. Life Ins. & Annuity Corp. v. Esfandiari, No. 10-00007 ACK–BMK, 2010 WL 3260248, at *4 (D. Haw. Aug. 13, 2010) (awarding life insurance company about $9,000); Farmers New World Life Ins. v. Rees, 161 Cal. Rptr. 3d 678, 685, 689 (Ct. App. 2013) (affirming trial court's award of about $8,000). Admittedly, insurers do not always recover their litigation expenses. *See infra* Part III.C (describing the shortcomings of a beneficiary designation).

209. *See, e.g.*, ALA. CODE § 27-14-24 (2018); DEL. CODE ANN. tit. 18, § 2721 (2018); FLA. STAT. § 627.423 (2018); IDAHO CODE § 41-1828 (2018); KY. REV. STAT. ANN. § 304.14-260 (West 2018); LA. STAT. ANN. § 22:877 (2018); ME. STAT. tit. 24-A, § 2425 (2018); MONT. CODE ANN. § 33-15-501 (2018); N.M. STAT. ANN. § 59A-18-26 (2018); OKLA. STAT. tit. 36, § 3626 (2018); VT. STAT. ANN. tit. 8, § 3712 (2018); W. VA. CODE § 33-6-22 (2018).

210. *See, e.g.*, Fortis Benefits Ins. v. Pinkley, 926 So. 2d 981, 984–85 (Ala. 2005) (discussing the purposes and common law underpinning of facility-of-payment legislation).

211. *See, e.g.*, 4 STEVEN PLITT, DANIEL MALDONADO & JOSHUA D. ROGERS, COUCH ON INSURANCE 3d § 60:77 (rev. ed. 2011) ("[T]he insurer is not under any duty to investigate the mental competency of the insured [or] . . . whether a change of beneficiary had been procured by undue influence in the absence of knowledge of facts that would indicate that the change might have been so procured.").

212. *See, e.g.*, *Fortis Benefits Ins.*, 926 So. 2d at 989 (holding that insurer has no "duty to investigate and discover whether a change of beneficiary has been procured by forgery"); Schwartz v. Guardian Life Ins. of Am., 73 So. 3d 798, 808 (Fla. Dist. Ct. App. 2011) ("[O]ur statute . . . does not impose a duty on the insurer to investigate whether a change of owner or beneficiary has been procured by forgery."); McNabb v. Ky. Cent. Life Ins., 631 S.W.2d 253, 255 (Tex. App. 1982) ("The insurer is not under any duty to determine whether the change of beneficiary was procured or induced by improper means where it has no reason to believe or know that such was the case.").

is typically not entitled to attorney's fees if she is responsible for the dispute between the interested parties.[213] One way an insurer can minimize its culpability for causing a forgery contest is to remain ignorant of a beneficiary designation's true signature.[214] Likewise, under facility-of-payment statutes, one element of this defense is the insurer's good faith—the fact that the company "has no reason to believe or know" that something about the beneficiary designation is awry.[215] Thus, the less an insurer learns, the more reasonable its reliance on a forged designation will seem in hindsight.[216]

As a result, these companies have only made hollow gestures toward discouraging forgery. Although insurance policies are contracts, and therefore not always publicly available, we were able to gather thirteen beneficiary-designation forms from court filings and

213. *See*, *e.g.*, United Bank of Denver v. Oxford Props., Inc., 683 F. Supp. 755, 757 (D. Colo. 1988) ("Courts traditionally have refused to award costs and counsel fees to a stakeholder who is in some way culpable as regards the subject matter of the interpleader proceeding, but not sufficiently culpable to warrant denial of interpleader altogether.").

214. *Cf.* Demerath v. Knights of Columbus, 680 N.W.2d 200, 204 (Neb. 2004) (holding that an insurance company did not need to investigate whether an attorney-in-fact had the authority to alter a beneficiary designation when it had no "knowledge of facts reasonably suggesting the change was improper").

215. *Schwartz*, 73 So. 3d at 807.

216. In beneficiary-designation disputes, courts often defer to rather than regulate the life insurance carrier's designation procedures. For instance, in *Maddox v. Aetna Life Insurance Co.*, No. 04-73478, 2006 WL 1235177 (E.D. Mich. May 8, 2006), the life insurance benefit manager had "changed its procedures . . . to allow oral changes to the designation of beneficiaries." *Id.* at *1 n.2. Seventeen days before the insured's death, a companion who had been living with the insured for about six months called the benefit manager from the insured's hospital room to request a beneficiary change. *Id.* at *1. Both the companion and the insured participated on the call in which they removed the insured's three sons from the policy and, instead, named the companion as the sole death beneficiary. *Id.* In court, the sons argued that the insured "was gravely ill at the time of the change of beneficiary" and that "the telephone call's transcript indicates that [the companion] was doing the overwhelming amount of the talking to the [insurance carrier's] representative." *Id.* at *2. Citing compliance with the benefit manager's change-of-beneficiary procedures, the court rejected the sons' undue influence contest because the insurer's payment to the companion was neither arbitrary nor capricious. *Id.* at *3.

the internet.[217] These forms reveal that insurers have adopted protocols that only create the illusion of security.[218]

For one, insurers have haphazardly borrowed principles from the law of will execution. As mentioned earlier, the Wills Act requires testamentary instruments to be written, signed by the testator, and attested by two people who were present at the same time when the testator signed or acknowledged the document.[219] Most states also have "purging" statutes, which require interested witnesses to forfeit any benefit that they take under the will.[220] In the realm of life insurance,

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217. *See* BENEFICIARY DESIGNATION FORM, AAA LIFE INS. CO. [hereinafter AAA FORM], https://www.aaalife.com/binaries/content/assets/pdf/aaa-life—-beneficiary-designation-form.pdf [https://perma.cc/AU3A-RYNN]; CHANGE OF BENEFICIARY, AM. INT'L GRP., INC. [hereinafter AIG FORM], https://www.aig.com/content/dam/aig/america-canada/us/documents/individual/life/aglc0108-report.pdf [https://perma.cc/M4PW-XL2Q]; BENEFICIARY CHANGE REQUEST, AM. NAT'L [hereinafter AM. NAT'L FORM], https://www.americannational.com/wps/wcm/connect/americannational/d0ce760f-7b6a-48f1-ac61-97908c16b5f3/Beneficiary+Change+Request+Form+AN-11088.pdf?MOD=AJPERES [https://perma.cc/6TLB-G8QJ]; BENEFICIARY CHANGE REQUEST, CHESAPEAKE LIFE INS. CO. (2008 version) [hereinafter 2008 CHESAPEAKE FORM] (on file with authors); CHANGE OF BENEFICIARY FORM, COLONIAL LIFE [hereinafter COLONIAL LIFE FORM], https://www.coloniallife.com/en/-/media/Main/PDFs/Service-Forms/change-of-beneficiary-form-17075.ashx [https://perma.cc/Z395-N3UV]; BENEFICIARY CHANGE FOR LIFE POLICY, LINCOLN FIN. GRP. [hereinafter LINCOLN FORM], https://www.lfg.com/pbl-forms-service-app/rest/forms/getDocument/8713/CS06893 [https://perma.cc/95DG-XXFD]; INDIVIDUAL OWNER & BENEFICIARY CHANGE REQUEST, MASSMUTUAL [hereinafter MASSMUTUAL FORM], https://www.massmutual.com/efiles/life/pdfs/fr2255.pdf [https://perma.cc/WSG2-KBSH]; LIFE INSURANCE CHANGE OF BENEFICIARY – SHORT FORM, METRO. LIFE INS. CO. [hereinafter METLIFE FORM], https://eforms.metlife.com/wcm8/PDFFiles/55783.pdf [https://perma.cc/Q226-6EES]; APPLICATION FOR CHANGE OF BENEFICIARY DESIGNATION, NATIONWIDE [hereinafter NATIONWIDE FORM], https://nationwidefinancial.com/media/pdf/LAF-0119AO.pdf [https://perma.cc/DPS8-C3FX]; OWNERSHIP/BENEFICIARY CHANGE FORM FOR NEW YORK LIFE ANNUITIES, N.Y. LIFE, [hereinafter N.Y. LIFE FORM], http://www.nylinvestments.com/polos/OwnershipBeneficiary_Change_Form_For_New_York_Life_Annuities.pdf [https://perma.cc/Y4W9-6AFL]; REQUEST TO CHANGE BENEFICIARY ON LIFE INSURANCE POLICIES, PRUDENTIAL [hereinafter PRUDENTIAL FORM], https://www.accuquote.com/wp-content/uploads/2015/04/PRU_COB-Only.pdf [https://perma.cc/9J4Z-S7NW].

218. In the related context of retirement accounts, scholars have noted that financial institutions unwisely "rel[y] on the attentiveness and comprehension of lay accountholders confronted with often counterintuitive forms thrust in front of them by institutions with little incentive (and no obligation) to clarify or explain those forms." Stewart E. Sterk & Melanie B. Leslie, *Accidental Inheritance: Retirement Accounts and the Hidden Law of Succession*, 89 N.Y.U. L. REV. 165, 212 (2014).

219. *See supra* notes 69–71.

220. *See, e.g.*, N.Y. EST. POWERS & TRUSTS LAW § 3-3.2(a) (McKinney 2018) (codifying such witness abrogations, subject to additional limitations). *But see* UNIF. PROBATE CODE § 2-505(b) (UNIF. LAW COMM'N 1969) (amended 2010) ("The signing of a will by an interested witness does not invalidate the will or any provision of it.").

only Massachusetts has even partially replicated these rules by mandating that "a disinterested person" subscribe these beneficiary designations.[221] Consequently, insurers are largely free to construct their own formalities, and many use only the bare minimum. For example, although Massachusetts companies insist that policyholders sign their forms,[222] they generally do not require attestation. Some beneficiary designations contain a space for a witness's signature but also instruct policyholders that only Massachusetts residents need to take this step.[223] Other forms do not even contain a line for witnesses to put pen to paper.[224] Bizarrely, one company, Chesapeake Life, states in bold type that any witness must "NOT [be] a relative."[225] This requirement misapplies the purging doctrine by prohibiting *related* rather than *interested* witnesses: after all, not all beneficiaries are relatives and not all relatives are beneficiaries.

Some companies also require the signature of any "irrevocable beneficiary." An irrevocable beneficiary is a person whose interest "cannot be divested without [her] consent."[226] Given this definition, it is not surprising that several insurers ask *existing* irrevocable beneficiaries to sign—and thereby assent to—forms that *remove* their name from the policy.[227] Yet a handful of firms also demand that irrevocable beneficiaries sign in order to be *added* to the policy.[228] This

221. MASS. GEN. LAWS ch. 175, § 123 (2018); *see also* Cannon v. Cannon, 868 N.E.2d 636, 641 (Mass. App. Ct. 2007) (noting that the statute "has an obvious purpose of preventing fraud in the designation of beneficiaries").

222. *See, e.g.*, AAA FORM, *supra* note 217, at 1; AIG FORM, *supra* note 217, at 2; AM. NAT'L FORM, *supra* note 217, at 1; COLONIAL LIFE FORM, *supra* note 217, at 1; LINCOLN FORM, *supra* note 217, at 1; MASSMUTUAL FORM, *supra* note 217, at 7; METLIFE FORM, *supra* note 217, at 3; PRUDENTIAL FORM, *supra* note 217, at 3.

223. *See, e.g.*, MASSMUTUAL FORM, *supra* note 217, at 7; NATIONWIDE FORM, *supra* note 217, at 4–5; N.Y. LIFE FORM, *supra* note 217, at 3; PRUDENTIAL FORM, *supra* note 217, at 3.

224. *See, e.g.*, AAA FORM, *supra* note 217; AM. NAT'L FORM, *supra* note 217; COLONIAL LIFE FORM, *supra* note 217; LINCOLN FORM, *supra* note 217. Some of these forms might pertain to group insurance policies, which are exempt from the Massachusetts statute. *See* MASS. GEN. LAWS ch. 175, § 123. But even if attestation is not legally necessary, insurers could voluntarily adopt this extra safeguard.

225. 2008 CHESAPEAKE FORM, *supra* note 217, at 2. This version of the form was in effect in 2008. As we mention *infra* note 228, the company amended it in 2015.

226. Kliamovich v. Kliamovich, 925 N.Y.S.2d 591, 594 (App. Div. 2011).

227. *See, e.g.*, METLIFE FORM, *supra* note 217, at 3 ("If an irrevocable Beneficiary was previously named, they must sign and date below.").

228. *See, e.g.*, AIG FORM, *supra* note 217, at 2–3 (noting that the request must be signed by an irrevocable beneficiary). American National's form confusingly states that "[i]f an irrevocable beneficiary exists on a policy, that person must sign." AM. NAT'L FORM, *supra* note 217, at 7. This instruction does not specify whether the person who must sign is the one being added to the policy

stipulation is both unnecessary and unwise. Nobody needs to agree to become a beneficiary. In fact, anyone who does not want to collect insurance proceeds can simply disclaim them.[229] Moreover, this mandate increases the potential for wrongdoing by inserting parties who stand to gain from a beneficiary designation into the process of executing it. Notably, in other contexts, the law discourages this very arrangement: purging statutes force interested witnesses to disgorge their inheritances,[230] and the doctrine of undue influence considers an alleged wrongdoer's active involvement in creating a donative instrument as a suspicious circumstance.[231] Thus, soliciting a signature from a prospective irrevocable beneficiary invites trouble.

Finally, some insurers ask a customer to enclose a copy of their policy along with the change-of-beneficiary form.[232] The idea seems to be that only the insured has possession of the underlying contract. However, this precaution adds nothing in the common scenario in which a forger lives with the victim or otherwise has access to her important documents, including documents bearing the victim's signature. For example, in *Chesapeake Life Insurance v. Parker*,[233] which was discussed in the Introduction, a company's submit-the-policy mandate did not stop the decedent's sister, who was caring for him and thus probably had access to the policy, from faking his signature.[234] Moreover, firms impose this mandate with one hand and then void it with the other. For example, Nationwide's beneficiary designation "waives any policy provision requiring the return of the [p]olicy to the [c]ompany,"[235] and Prudential's states that, by signing

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or the one who is being removed. Likewise, in 2015, Chesapeake Life began requiring the signature of an "irrevocable beneficiary" without elaborating whether this means an old or new beneficiary. BENEFICIARY CHANGE REQUEST, CHESAPEAKE LIFE INS. CO. 2 (2015 version) [hereinafter 2015 CHESAPEAKE FORM] (on file with authors).

229. *See, e.g.*, UNIF. PROBATE CODE § 2-1105(a) (amended 2010) ("A person may disclaim, in whole or part, any interest in or power over property . . . .").

230. *See supra* note 220 and accompanying text.

231. *See, e.g.*, RESTATEMENT (THIRD) OF PROP.: WILLS & DONATIVE TRANSFERS § 8.3 cmt. h (AM. LAW INST. 2003) ("In evaluating whether suspicious circumstances are present, all relevant factors may be considered, including . . . the extent to which the alleged wrongdoer participated in the preparation or procurement of the will or will substitute . . . .").

232. *See, e.g.*, 2015 CHESAPEAKE FORM, *supra* note 228, at 2**.**

233. Chesapeake Life Ins. v. Parker, No. 18-C-643, 2018 WL 4188469 (E.D. Wis. Aug. 31, 2018).

234. *See supra* notes 25–32 and accompanying text.

235. NATIONWIDE FORM, *supra* note 217, at 3.

the form, the insured "certif[ies] that the policy(ies) is/are in [her] possession."[236] Accordingly, this protection is also largely hollow.

To conclude, life insurance companies have virtually no incentive to deter forged beneficiary designations. As a result, they have adopted formalities that range from the merely toothless to the downright counterproductive.

III. NORMATIVE PRESCRIPTIONS

In light of the prevalence of inheritance forgeries established above, this Part proposes ways to strengthen inheritance law's protections against forgery. For wills, this Part critiques execution formalities that pose a heightened risk of forgery and suggests new burden-shifting rules that would make it easier for contestants to prove forgery in court. For deeds, it suggests enhancing the authentication protocols of Deed Registers. And for beneficiary designations, it proposes that life insurance companies should bear more responsibility for deterring forgery.

A. Wills

1. *Execution*. As noted, the law of will execution has been in flux. Inspired by the UPC, several states have either adopted the harmless error rule, allowed notarization instead of attestation, abolished purging statutes, or authorized electronic wills.[237] This Section argues that the prevalence of inheritance forgery raises fresh questions about some of these changes.

The boldest of these developments—the harmless error rule—likely has little impact on forgery.[238] As mentioned, the harmless error doctrine allows courts to validate a writing that does not comply with the Wills Act if there is clear and convincing evidence that the testator intended it to be her will.[239] It seems highly unlikely that a forger would create a fake will that violates the Wills Act and then subject the forgery to a litigated will contest. The harmless error rule's heightened scrutiny would bring unwanted attention to any suspicious

236. PRUDENTIAL FORM, *supra* note 217, at 3.

237. *See supra* Part I.

238. Harmless error is "the most significant change in what constitutes a will since [the] enactment of the Statute of Frauds." Bruce H. Mann, *Formalities and Formalism in the Uniform Probate Code*, 142 U. PA. L. REV. 1033, 1035 (1994).

239. *See supra* note 105.

circumstances surrounding the document's execution. Our findings support this hypothesis: nearly all wills in the cases we reviewed either were purportedly signed by witnesses or seemed to satisfy the requirements for a holographic will.[240] At bottom, then, the harmless error rule seems to neither weaken nor enhance inheritance law's regulation of will forgery.

The data also suggest that the abolition of purging statutes is a relatively risk-free step from a forgery perspective. In our review of cases, none of the wills set aside on forgery grounds was signed by a witness who also claimed to be a beneficiary.[241] Again, this makes sense: it is not clear why a wrongdoer would go out of her way to call attention to a forgery by embroiling herself in a fraudulent execution process.

More controversially, relaxation of the handwriting requirement for holographic wills also seems benign. Commentators who are skeptical of holographic wills have questioned whether handwritten but unattested instruments provide "sufficient protection against forgery."[242] Other critics have gone further and asserted that "[m]ost bogus [(forged)] wills are holographic."[243] In stark contrast, we found only two decisions that held that a holographic will was forged.[244] This supports the conventional justification for allowing the testator's handwriting to serve as a substitute for witnesses, which is the idea that "a successful counterfeit of another's handwriting is exceedingly difficult."[245] Apparently, despite the questionable reliability of forensic handwriting analysis, forgers remain sufficiently concerned about the possibility of detection to prefer typewritten forgeries that require handwritten fabrication of only the decedent's signature.

However, we are less sanguine about notarized wills. Scholars have argued that attestation fails to prevent fraud because wrongdoers usually know enough about Wills Act formalities to procure or

240. *See infra* Appendix tbl.1 (listing all reviewed will contests).

241. *Cf. In re* Estate of Dalbec, No. A04-1524, 2005 WL 1619867, at *2, *6 (Minn. Ct. App. July 12, 2005) (upholding a will despite the fact that the spouse of a beneficiary acted as a witness); *In re* Estate of Cruciani, 986 A.2d 853, 857, 860 (Pa. Super. Ct. 2009) (invalidating a will where the notary's acknowledgment clause identified the will beneficiary as a subscribing witness even though another person actually signed the will as a witness).

242. Natale, *supra* note 74, at 169.

243. John J. Harris, *Genuine—or Forged?*, 32 J. ST. B. CAL. 658, 660 (1957).

244. *In re* Estate of Presutti, 783 A.2d 803, 807 (Pa. Super. Ct. 2001); Perkins v. Swafford (*In re* Estate of Peery), No. E1999-02318-COA-R3-CV, 2000 WL 222617, at *1 (Tenn. Ct. App. Feb. 28, 2000).

245. Dean v. Dickey, 225 S.W.2d 999, 1000 (Tex. Civ. App. 1949).

fabricate witness signatures.[246] Notarization seems to suffer from, if not exacerbate, the same defect. As mentioned in Part II, one of the most striking commonalities in forged wills is that they were notarized.[247] In fact, faith in notarization creates an additional risk: the fanfare of an official seal can give a document an imprimatur it does not deserve. Indeed, courts and litigants may be less likely to question a purported will that boasts this veneer of legitimacy. Counterintuitively, then, permitting notarized wills may actually provide *less* protection than the traditional attestation requirement.[248]

Finally, policymakers should keep forgery in mind as they address the nascent issue of electronic wills. As noted, several jurisdictions

246. *See supra* note 112 and accompanying text.

247. *See* Vieira v. Vieira, No. CV020172366S, 2004 WL 2361556 (Conn. Super. Ct. Sept. 14, 2004); *In re* Estate of Tinley, No. CIV.A. 1318-K, 2001 WL 765177 (Del. Ch. June 26, 2001), *aff'd sub nom.* Tinley v. Pleasanton, 791 A.2d 751 (Del. 2002) (unpublished table decision); Waters v. Iverson (*In re* Estate of Waters), No. 1-13-1262, 2014 WL 4402826 (Ill. App. Ct. Sept. 5, 2014); Castor v. Pulaski, 985 N.Y.S.2d 380 (App. Div. 2014); *In re* Estate of Greene, 932 N.Y.S.2d 544 (App. Div. 2011); Estate of Konjolka v. Brown (*In re* Estate of Konjolka), No. 1664 WDA 2015, 2017 WL 2704070 (Pa. Super. Ct. June 22, 2017); *In re* Estate of Cruciani, 986 A.2d 853 (Pa. Super. Ct. 2009); *In re* Estate of Pendergrass, No. 2010-X0189, 2014 WL 11201432 (Pa. Ct. Com. Pl. Oct. 14, 2014). Similarly, in the related context of counterfeit deeds, many cases involve stolen or fabricated notaries' seals or fraud committed by notaries. *See* Geggis & Roustan, *supra* note 189 (reporting on the use of "fraudulent notary signatures"); Olinger, *supra* note 190 (reporting on a notary who conceded that she broke the law); Olsen, *supra* note 177 (reporting on fraud involving "faked notaries' seals" and notaries acting as accomplices to fraud); Segall, *supra* note 175 ("[T]he notaries who supposedly stamped and signed [deeds] each say they didn't."). Attorneys also have been careless about notarizing wills and deeds outside the presence of necessary signatories. *See In re* Brown, 68 So. 3d 1023, 1027 (La. 2011) (affirming attorney suspension for notarizing a forged will when attorney could not see parties present at will execution); Lorain Cty. Bar Ass'n v. Kennedy, 766 N.E.2d 151, 152 (Ohio 2002) ("Respondent . . . admitted that she had notarized the quitclaim deeds before they were submitted to the grantor.").

248. To be sure, some jurisdictions allow forgery victims to recover tort damages against notarial officers for negligent and willful misconduct. *See* City Consumer Servs., Inc. v. Metcalf, 775 P.2d 1065, 1069 (Ariz. 1989) (en banc) (affirming liability for negligently notarizing quitclaim deed). *But see* NationsBank of N.C. v. Parker, 535 S.E.2d 597, 599 (N.C. Ct. App. 2000) ("Absent allegations of malice or corruption a notary may not be held liable for acts within her scope of duties." (quoting McGee v. Eubanks, 335 S.E.2d 178, 182 (N.C. Ct. App. 1985))). However, plaintiffs in these cases need to establish causation, which can be tricky. *See* Bussman v. Krizoe, 520 N.E.2d 971, 973 (Ill. App. Ct. 1988) (holding that a notary's negligence was not the proximate cause of the plaintiff's damages); Immerman v. Ostertag, 199 A.2d 869, 874 (N.J. Super. Ct. Law Div. 1964) (stating that a notary was negligent for notarizing a document signed by a person impersonating a deceased mortgage guarantor, but that the plaintiff failed to establish a link to its loss); Rastelli v. Gassman, 647 N.Y.S.2d 253, 255 (App. Div. 1996) (denying motion to dismiss a mortgagees' complaint for notarial misconduct). Finally, notaries often lack deep pockets to pay tort damages, and liability is personal to the notary—not vicarious to the notary's employer. *See* Vancura v. Katris, 939 N.E.2d 328, 346 (Ill. 2010) ("[W]hen a notary public wrongfully or negligently exercises the powers of the office, it is the notary alone who becomes liable.").

have either passed or are considering legislation that validates digital testamentary instruments.[249] Some of these laws permit testators to legitimate their handiwork by using technology instead of obtaining traditional witness signatures. For example, Arizona and Nevada now admit documents to probate that bear the testator's electronic signature and a so-called "authentication characteristic":

> "Authentication characteristic" means a characteristic of a certain person that is unique to that person and that is capable of measurement and recognition in an electronic record as a biological aspect of or physical act performed by that person. Such a characteristic may consist of a fingerprint, a retinal scan, voice recognition, facial recognition, video recording, a digitized signature or other commercially reasonable authentication using a unique characteristic of the person.[250]

In addition, these statutes go even further than the 2008 revisions to the UPC by accepting "electronic notarization" in lieu of attestation.[251] Electronic notarization refers to a process in which the testator and the notarial officer are in "[d]ifferent physical locations but can communicate with each other by means of audio-video communication."[252]

These futuristic makeovers of the Wills Act have the potential to both deter and invite forgery. Some authentication characteristics, such as fingerprints, voice recognition, and retinal scans, are probably harder to fabricate than signatures, attestation clauses, and self-proving affidavits. If the new statutes limited the universe of witness substitutes to these biometric measures, they might make digital wills

249. *See supra* notes 113–16 and accompanying text.

250. NEV. REV. STAT. § 133.085(5)(a) (2018); *see also* ARIZ. REV. STAT. ANN. § 41-351 (2018) (defining "electronic signature" based on similar requirements). The Silver State actually passed an e-will statute in 2001. *See* NEV. REV. STAT. c. 458, § 9(1)(b) (2001). However, the law made almost no impact because it required anticopying software that had not yet been developed. *See* Gerry W. Beyer & Claire G. Hargrove, *Digital Wills: Has the Time Come for Wills To Join the Digital Revolution?*, 33 OHIO N.U. L. REV. 865, 891 (2007). Similar bills have been introduced in California and the District of Columbia. *See* Assemb. B. 3095, 2017–18 Leg., Reg. Sess. (Cal. 2018); Leg. B. 169, 22d Period (D.C. 2017). Alternatively, Indiana's e-will statute continues to require attestation. *See* H.E.A. 1303, 120th Gen. Assemb., 2d Reg. Sess. (Ind. 2018).

251. ARIZ. REV. STAT. ANN. § 41-352; NEV. REV. STAT. § 133.085. The Uniform Law Commission's draft Electronic Wills Act also permits digital wills to be "acknowledged by the testator before a notary public or other individual authorized by law to notarize records electronically." DRAFT ELECTRONIC WILLS ACT, *supra* note 114, at 6. However, the provision appears in brackets, which indicates that not all states are expected to include it.

252. NEV. REV. STAT. § 133.088(1)(a)(2).

more reliable than their paper-based counterparts. However, other authentication characteristics are ill-advised. For instance, the catchall for "commercially reasonable" authentication techniques seems dubious. "Commercially reasonable" means "in accordance with commonly accepted . . . practice."[253] Yet as has been demonstrated in the context of life insurance, just because a protective measure is widely used does not make it effective. Similarly, we are skeptical of electronic notarization. Indeed, the frequency of notarial misconduct in face-to-face transactions casts doubt on the wisdom of opening the door to remote notarization.[254] In fact, former Florida Governor Rick Scott recently vetoed an electronic Wills Act passed by the state legislature for this very reason.[255] Accordingly, lawmakers should delete these provisions.

2. *Burden-Shifting*. Courts should also reform the burden of persuasion in will-forgery litigation. As this Section explains, they can do so by borrowing the infrastructure from undue influence contests.

Under current law, a will's proponents enjoy a powerful procedural advantage. As we mentioned above, well-drafted wills contain either an attestation clause or a self-proving affidavit, in which the witnesses declare that they saw the testator sign or acknowledge the document.[256] These provisions are invaluable in uncontested estates. They permit the court to enforce an instrument without having to solicit live testimony, and they spare the proponent from having to produce witnesses who may have died, relocated, or forgotten "acts that . . . occurred years or even decades earlier."[257] Thus, courts give these devices tremendous weight. Indeed, "[a]n attestation clause is

253. *Commercially Reasonable*, BLACK'S LAW DICTIONARY (8th ed. 2004).

254. *See supra* note 138 and accompanying text.

255. *See* Letter from Rick Scott, Fla. Governor, to Ken Detzner, Fla. Sec'y of State (June 26, 2017), https://www.flgov.com/wp-content/uploads/2017/06/HB-277-Veto-Letter.pdf [https://perma.cc/DWH6-77VV] ("While the concept of remote notarization is meant to provide increased access to legal services like estate planning, the remote notarization provisions in the bill do not adequately ensure authentication of the identity of the parties to the transaction . . . .").

256. *See supra* notes 84–87 and accompanying text. Courts and scholars also refer to a will as "self-proving" if it is accompanied by a contemporaneously or subsequently sworn affidavit of attesting witnesses reciting the fact of due execution. *See* UNIF. PROBATE CODE § 2-504 (amended 2010).

257. Mann, *Self-Proving Affidavits*, *supra* note 98, at 40; *see also* Reid Kress Weisbord, *The Advisory Function of Law*, 90 TUL. L. REV. 129, 158–59 (2015) (describing how the self-proving affidavit replaced live testimony in proceedings to probate a will).

prima facie evidence of the facts stated in it,"[258] and a self-proving affidavit "satisfies the requirements for execution without the testimony of any attesting witness."[259]

However, in forgery disputes, this norm of blithely deferring to attestation clauses and self-proving affidavits has unfortunate consequences. First, it allows wrongdoers to create a force field around sham wills. The mere appearance of an attestation clause or a self-proving affidavit satisfies the presumption of due execution, saddling the contestant with proving her claim of forgery by clear and convincing evidence.[260] But forgers can concoct these provisions as easily as they can manufacture any other part of a fake instrument. Moreover, attestation clauses and self-proving affidavits contain factual statements that are hard to impeach. After all, they are out-of-court assertions by individuals who often cannot be cross-examined. Accordingly, the law sets too high a bar for forgery challenges.

Moreover, even when forgery contestants prevail, the validity presumption arising from an attestation clause or self-proving affidavit often exacerbates the cost of litigating a will contest. For instance, in *In re Estate of Pendergrass*, the proponent forged a self-proving affidavit

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258. *In re* Estate of Politowicz, 304 A.2d 569, 570 (N.J. Super. Ct. App. Div. 1973) (emphasis omitted); *see also* Estate of Smith v. Koontz (*In re* Estate of Smith), 668 N.E.2d 102, 105 (Ill. App. Ct. 1996) ("If the will contains an attestation clause, which shows on its face that all statutory guidelines have been met, and the signatures are admittedly genuine, a *prima facie* case of proper execution has been made."); Slack v. Truitt, 791 A.2d 129, 133 (Md. 2002) ("The view 'seems to prevail widely in other jurisdictions that a complete attestation clause showing observance of all statutory requirements raises a presumption of the due execution of a will . . . .'" (quoting German Evangelical Bethel Church v. Reith, 39 S.W.2d 1057, 1061 (Mo. 1931))).

259. UNIF. PROBATE CODE § 3-406(1) (amended 2008). Fifteen jurisdictions have adopted this rule. *See* RESTATEMENT (THIRD) OF PROP.: WILLS & DONATIVE TRANSFERS § 8.3 reporter's note § 2 cmt. b (AM. LAW INST. 2003) (listing state enactments).

260. *See In re* Estate of Tinley, No. CIV.A. 1318-K, 2001 WL 765177, at *2 (Del. Ch. June 26, 2001) (requiring proof of will forgery "by evidence which is clear, direct, precise and convincing"), *aff'd sub nom.* Tinley v. Pleasanton, 791 A.2d 751 (Del. 2002) (unpublished table decision); *Slack*, 791 A.2d at 133 ("We have held that once the presumption [of validity] attaches, the burden of proof is on the caveator to show by clear and convincing evidence that the facts stated in the attestation clause are untrue." (footnote omitted)); Kita v. Matuszak, 222 N.W.2d 216, 221 (Mich. Ct. App. 1974) (requiring clear and convincing evidence to prove will forgery); *In re Politowicz*, 304 A.2d at 570–71 ("The attestation clause is now accepted as 'a most important element of proof' and the derivative presumption is deemed impregnable unless it is devastated by 'strong and convincing evidence.'" (quoting *In re* DuBois' Estate, 76 A.2d 33, 35 (N.J. Super. Ct. App. Div. 1950))); *In re* Estate of Luongo, 823 A.2d 942, 967 (Pa. Super. Ct. 2003) (requiring clear and convincing evidence to prove will forgery). The UPC's validity presumption for self-proving wills does contain an exception for "evidence of fraud or forgery *affecting the acknowledgment or affidavit*," UNIF. PROBATE CODE § 3-406(1) (emphasis added), but otherwise allocates the burden of proving fraud to contestants, *id.* § 3-407.

to support the bogus will of Teddy Pendergrass.[261] The court initially held that the document had been properly executed and granted letters testamentary to the wrongdoer.[262] The contestants then proved that the forger's "entire case was . . . [a] house of cards" built on perjured testimony.[263] Yet to overcome the probate court's initial validity presumption, the contestants had to conduct "extensive discovery" and incur the cost of mounting eight days of witness testimony.[264]

Rather than this blunt approach, courts should adopt the nuanced burden-shifting regime used in undue influence claims. This venerable common law rubric recognizes that undue influence contestants often lack access to direct evidence of the proponent's wrongdoing.[265] It compensates for this evidentiary disadvantage by accepting a threshold showing of wrongdoing by mere inference rather than by clear and convincing proof.[266] Although the law varies slightly by state, a presumption of undue influence generally arises when a contestant proves (1) that there was a confidential relationship between the testator and the wrongdoer, and (2) there were one or more suspicious circumstances, such as proof that (a) the testator was mentally or physically infirm, (b) the wrongdoer helped create the will, or (c) the instrument leaves the property in an "unnatural or unusual way."[267]

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261. Last Will and Testament of Theodore DeReese Pendergrass, *supra* note 133.

262. *In re* Estate of Pendergrass, No. 2010-X0189, 2014 WL 11201432, at *1 (Pa. Ct. Com. Pl. Oct. 14, 2014).

263. *Id.* at *15.

264. *Id.* at *1.

265. *See* RESTATEMENT (THIRD) OF PROP.: WILLS & DONATIVE TRANSFERS § 8.3 cmt. e (AM. LAW. INST. 2003) ("Direct evidence of the wrongdoer's conduct and the donor's subservience is rarely available to establish the actual exertion of undue influence.").

266. *See id.* ("The contestant's case must usually be based on circumstantial evidence, and in certain cases, is aided by a presumption of undue influence.").

267. Mueller v. Wells (*In re* Estate of Barnes), 367 P.3d 580, 585 (Wash. 2016); *see also* Potter v. Coleman (*In re* Estate of Baker), 182 Cal. Rptr. 550, 556 (Ct. App. 1982) (linking the presumption to "(1) the existence of a confidential or fiduciary relationship between the testator and the person alleged to have exerted undue influence; (2) active participation by such person in the preparation or execution of the will; and (3) an undue benefit to such person"); Cresto v. Cresto (*In re* Estate of Cresto), 358 P.3d 831, 842 (Kan. 2015) (describing the "suspicious circumstances" prong of the test). The doctrine of fraud recognizes a similar presumption of invalidity in some circumstances. A donative transfer is not enforceable if the donor was deceived by the wrongdoer's knowing or reckless false representation about a material fact. *See* RESTATEMENT (THIRD) OF PROP.: WILLS & DONATIVE TRANSFERS § 8.3. Although this principle does not generally apply to material omissions, courts may assume that the failure to disclose a material fact was fraudulent if "the alleged wrongdoer was in a confidential relationship with the donor." *Id.* § 8.3 cmt. j. Tilting the scales in this way eases the burden on fraud contestants who would otherwise have to overcome the formidable challenge of disproving a negative—that is, the fact of omission—while handicapped by the "worst evidence" problem. *See supra* note 34

Once a contestant satisfies this threshold inquiry, the burden then shifts to the proponent to prove—often by clear and convincing evidence—that the contested gift was voluntary.[268]

Our research highlights the factors that courts could use to create a similar presumption for inauthentic wills. In particular, five themes run throughout successful forgery contests. First, although some counterfeit wills seem unremarkable to the naked eye, others have obvious incongruities. These dark hallmarks of forgery include document errors that would have been obvious to the testator or attesting witnesses,[269] signatures that sharply deviate from previous examples,[270] and extrinsic evidence refuting the contested instrument. For instance, a court might credit lay testimony that the handwriting on a document is "far too neat and perfect"[271] or that a disabled testator "was not physically capable of signing anything"[272] to find that an alleged will "excites suspicion."[273]

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and accompanying text. Indeed, a California statute takes this concept one step further: it enumerates six categories of transferees who are presumed to have procured a donative transfer through fraud by reason of the transferee's close relationship with the transferor. CAL. PROB. CODE § 21380 (West 2018).

268. *See* Broochian v. Feiner (*In re* Estate of Feiner), No. A-0561-15T3, 2017 WL 4364482, at *5 (N.J. Super. Ct. App. Div. Oct. 3, 2017)("To rebut the presumption after the burden switches, the beneficiary of a gift challenged for undue influence must establish his or her case by clear and convincing evidence."). Admittedly, scholars have criticized the capaciousness of undue influence for inviting courts to invoke the doctrine as pretext for setting aside voluntary but socially objectionable donative choices. *See, e.g.*, Melanie B. Leslie, *The Myth of Testamentary Freedom*, 38 ARIZ. L. REV. 235, 243–58 (1996); Ray D. Madoff, *Unmasking Undue Influence*, 81 MINN. L. REV. 571, 611 (1997); Carla Spivack, *Why the Testamentary Doctrine of Undue Influence Should Be Abolished*, 58 U. KAN. L. REV. 245, 267 (2010); *cf.* Adam J. Hirsch, *Testation and the Mind*, 74 WASH. & LEE L. REV. 285, 346–55 (2017) (commenting that isolation and coercion are better predicates for undue influence than susceptibility). However, because forgery involves egregious wrongdoing—not the inkblot question of whether influence is "undue"—it does not seem susceptible to a similar critique.

269. *See In re* Estate of Cruciani, 986 A.2d 853, 856 (Pa. Super. Ct. 2009) (noting that "a signature . . . and typed name . . . did not appear appropriately situated").

270. *See* Brown v. Brown, 592 S.E.2d 854, 855 (Ga. 2004) (relying in part on lay testimony about "the differences between [the testator's] true signature and the signature on the will"); *In re* Estate of Presutti, 783 A.2d 803, 807 (Pa. Super. Ct. 2001) (featuring "seventy-five discrepancies between the signature on the contested document and the undisputed signatures of the decedent").

271. *In re Cruciani*, 986 A.2d at 855.

272. *In re* Estate of Pendergrass, No. 2010-X0189, 2014 WL 11201432, at *2 (Pa. Ct. Com. Pl. Oct. 14, 2014).

273. *In re* Estate of Link, 542 S.W.3d 438, 460 (Tenn. Ct. App. 2017). As noted in *supra* notes 142–44 and accompanying text, Tennessee requires the proponent to disprove forgery when the face of the will "excites suspicion." Under this proposal, physical abnormalities would be just one of several factors that would shift the burden.

Second, there is often a confidential relationship between the testator and the forger.[274] Admittedly, as with undue influence, intimacy can cut in two directions.[275] Testators might naturally want to reward caretakers, companions, and employees. But wrongdoers can also exploit their knowledge about a decedent's life to build a façade of legitimacy. For example, in one case, the testator's close friend used his access to the testator's house to place a forged will in the most convincing of locations: her Bible.[276] With this in mind, when grappling with forgery allegations, courts should be sensitive to this form of opportunism.

Third, a will's drafting history can indicate that it is a forgery. For instance, involvement of a crooked attorney does not bode well for a proposed will's legitimacy. Unfortunately for the reputation of the legal profession, phony wills are often written by lawyers who stand to inherit from the testator or who are paid by beneficiaries of the forged will. Francis X. Morrissey, who was disbarred after forging a codicil in the estate of socialite Brooke Astor, is perhaps the most famous example, but he is one of many crooked attorneys who are willing to violate both the code of professional conduct and criminal law in pursuit of greed.[277] In addition, homemade wills prepared without professional assistance are vulnerable to forgery.[278] In particular, one

274. *See In re* Estate of Field, 414 P.3d 1217, 1221 (Kan. Ct. App. 2018) (concerning forgery by a decedent's bookkeeper); Perkins v. Swafford (*In re* Estate of Peery), No. E1999-02318-COA-R3-CV, 2000 WL 222617, at *2 (Tenn. Ct. App. Feb. 28, 2000) (concerning forgery by a testator's caretaker).

275. As noted above, the presumption of undue influence usually *requires* a confidential relationship. *See supra* note 267 and accompanying text. However, there should be no such bright-line requirement for forgery. Unlike undue influence, which arises when a trusted person capitalizes on their power over the decedent, forgery can occur even when the wrongdoer has little interaction with the testator.

276. *See In re Peery*, 2000 WL 222617, at *1.

277. *See In re* Morrissey, 898 N.Y.S.2d 1, 1 (App. Div. 2010); *see also* United States v. Holmes, 193 F.3d 200, 201 (3d Cir. 1999); United States v. Pioch, No. 3:14CR403, 2017 WL 1376410, at *1 (N.D. Ohio Apr. 17, 2017), *aff'd in part and rev'd in part*, 902 F.3d 584 (6th Cir. 2018); People v. Molloy, No. E028980, 2002 WL 1943534, at *1 (Cal. Ct. App. Aug. 22, 2002); Att'y Grievance Comm'n of Md. v. Coppola, 19 A.3d 431, 433 (Md. 2011); State v. Keith, Nos. 76469, 76479 & 76610, 2000 WL 1176886, at *1 (Ohio Ct. App. Aug. 17, 2000); State v. Hamann, 630 N.E.2d 384, 386 (Ohio Ct. App. 1993); Skelton v. State, No. 04-08-00720-CR, 2010 WL 2298859, at *1 (Tex. App. June 9, 2010), *rev'd on other grounds sub nom Ex parte* Skelton, 434 S.W.3d 709 (Tex. App. 2014).

278. *See* Vieira v. Vieira, No. CV020172366S, 2004 WL 2361556, at *2 (Conn. Super. Ct. Sept. 14, 2004) (featuring false assertions that the decedent wrote his own will); *In re* Estate of Pendergrass, No. 2010-X0189 (Pa. Ct. Com. Pl. Oct. 14, 2014), 2014 WL 11201432, at *12 (same); *In re* Estate of Cruciani, 986 A.2d 853, 856 (Pa. Super. Ct. 2009) (same); *In re* Estate of Presutti,

glaring sign of forgery is the fact that a testator supposedly executed a will herself after "always us[ing] attorneys to draft them."[279]

Fourth, the forger is often the one to bring the bogus document to the court's attention. In case after case, the proponent of a sham will claims to have "discovered" it in a file cabinet[280] or a safe deposit box,[281] often only after no other will is found.[282] In one far-fetched scheme, a woman contended that the testator entrusted her with the will, inexplicably told her to "keep it confidential," and did not bat an eyelash when she proceeded to "roam the world" with the document inside her motor home.[283]

Fifth, many forged wills were allegedly signed just before the testator's death. This tactic reduces the chance of a subsequently executed will surfacing, shortens the waiting time to inherit from the estate, and allows a forger to exploit vulnerabilities associated with the testator's mental decline. To capitalize on these advantages, counterfeit testamentary instruments tend to be dated during the last three months of the testator's life.[284]

When several of these warning signs are present, the burden should shift to the proponent to prove the validity of the document. Although courts should have broad leeway to tailor each case to its facts, contestants should be required to prove that an alleged will suffers from at least two glimmers of forgery to make a *prima facie* case. Because some of these circumstances are relatively common, allowing just one of them to change the litigation landscape might encourage baseless claims. But when these indicia appear in clusters, there is good reason to be wary.

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783 A.2d 803, 805 (Pa. Super. Ct. 2001) (featuring a forged holograph); *In re Peery*, 2000 WL 222617, at *2 (same).

279. *In re Field*, 414 P.3d at 1233.

280. *See, e.g.*, *id.* at 1222.

281. *See Keith*, 2000 WL 1176886, at *1 (noting that the forger asserted "that he had discovered [the] Will in [the testator's] safety deposit box").

282. *See, e.g.*, *In re* Presutti, 783 A.2d at 805.

283. *Vieira*, 2004 WL 2361556, at *3, *6.

284. *See, e.g.*, Duffer v. Richards (*In re* Estate of Richards), No. B226261, 2011 WL 6062018, at *1 (Cal. Ct. App. Dec. 7, 2011) (describing a forged will allegedly signed about one month before the testator passed away); *Vieira*, 2004 WL 2361556, at *1 (three months); *In re* Estate of Tinley, No. CIV.A. 1318-K, 2001 WL 765177, at *1 (Del. Ch. June 26, 2001) (two months), *aff'd sub nom.* Tinley v. Pleasanton, 791 A.2d 751 (Del. 2002) (unpublished table decision); *In re Field*, 414 P.3d at 1222 (about one month).

To see how this proposal would work, return again to *In re Estate of Pendergrass*.[285] Rather than shifting the burden to the contestant because the alleged will *looks* valid,[286] the court would dig deeper. Through declarations or a short evidentiary hearing, the contestant could establish that (1) the testator had supposedly initialed the instrument seven times even though "he did not have the [requisite] fine motor skills";[287] (2) the writing was self-made, although the testator had previously hired an estate planner;[288] (3) the proponent "did not disclose the existence of the [alleged] . . . will during the decedent's life";[289] and (4) the testator had purportedly executed the document a mere six months before he died.[290] Forcing the proponent to rebut these hallmarks of forgery would streamline the case and make it easier for defrauded heirs and beneficiaries to vindicate their rights.

B. Deed Authentication

As this Article has noted, inheritance-related deed forgery has swept through the country.[291] This Section proposes reforms that would ameliorate this widespread problem. In addition, it explains why our research sounds a note of caution about the current movement to authorize TODDs.

At the outset, it should be acknowledged that any proposal to address the counterfeit-deed problem cannot be too ambitious. Some Deed Registers are swamped with paperwork. For example, Clark County, Nevada, "records more than 3,000 filings a day."[292] Furthermore, Deed Registers usually lack legal training and may not be able to make fine-grained assessments about the validity of an instrument.[293]

However, estate-related forgeries highlight the need for additional oversight. Many of these transfers are obvious shams. For example, in

285. *See supra* notes 129–38 and accompanying text.

286. *Cf. In re* Estate of Pendergrass, No. 2010-X0189, 2014 WL 11201432, at *1 (Pa. Ct. Com. Pl. Oct. 14, 2014) (explaining that because the will appeared to be valid, "the burden of proof shifted immediately to the contestant").

287. *Id.* at *2–3.

288. *Id.* at *4.

289. *Id.* at *13.

290. *Id.* at *1.

291. *See supra* Part II.B.

292. Segall, *supra* note 175.

293. *See* Olsen, *supra* note 177 (noting that in Harris County, Texas, "officials say they haven't time or expertise to verify documents").

some forgery cases, "the people whose signatures are on the deeds had been dead for years."[294] The Georgia Supreme Court recently confronted a deed that was "executed" in 2006 by a woman who died in 1974.[295] Likewise, a federal court in Virginia dealt with a deed signed by someone who had died a decade earlier.[296] At the opposite end of this spectrum, a counterfeiter in Pennsylvania recorded a deed in the name of a "deceased" woman who was, in fact, still alive.[297] The document stated that she had "departed this life on [_____]" but the forger did not "bother[] to complete the sentence."[298] These brazen examples demonstrate why the current system is broken.

Against this backdrop, a few simple steps could stem the tide of counterfeit deeds to decedents' homes. First, states could empower Deed Registers to refuse to record sketchy documents. The problem is not simply that "anyone can file a property transfer record or ownership claim without providing ID or other proof."[299] Instead, the problem is that many jurisdictions *require* Deed Registers to rubber-stamp any instrument that seems facially compliant.[300] Indeed, some Deed Registers have expressly asked for the power to reject suspicious deeds, which could close the loophole that inspired widespread fraud in the first place.[301]

For example, states could require Deed Registers to cross-reference the name of the transferor with death records, as an alarming

294. Ryan Kath, *Investigation of Apparent Real Estate Fraud Scheme Questions If Notary Signatures Were Forged*, KSHB41 KAN. CITY (Feb. 5, 2013, 10:41 PM), http://www.kshb.com/news/local-news/investigations/investigation-of-apparent-real-estate-fraud-scheme-questions-if-notary-signatures-were-forged [https://perma.cc/RFC9-YXWE]; *see also* Deramo v. Laffey, 52 N.Y.S.3d 119, 121 (App. Div. 2017) (describing a forgery purportedly executed two years after the property owner's death); First Nat'l Bank of Nev. v. Williams, 904 N.Y.S.2d 707, 708 (App. Div. 2010) (describing a deed conveyance pursuant to the durable power of attorney that was executed after the property owner's death); Ramos v. Turvey, No. 988 EDA 2013, 2014 WL 10920381, at *4 (Pa. Super. Ct. May 13, 2014) (describing a forgery purportedly executed more than two years after the property owner's death). Other forgers are careful to date conveyances shortly before the owner's death. *See, e.g.*, Grimes v. Grimes, 975 N.E.2d 496, 499 (Ohio Ct. App. 2012) (describing a forgery executed two months before the victim's death and recorded the same day as the death); Bryant v. Bryant, 856 N.Y.S.2d 22, 2007 WL 4458189, at *1 (Sur. Ct. Dec. 20, 2007) (describing a forgery executed three months before the victim's death and recorded posthumously).

295. Aurora Loan Servs., LLC v. Veatch, 710 S.E.2d 744, 744 (Ga. 2011).

296. El-Yacoubi v. Hetrick (*In re* Hetrick), 379 B.R. 612, 615 (Bankr. E.D. Va. 2007).

297. McCoy, *A Philadelphia Story*, *supra* note 104.

298. *Id.*

299. Olsen, *supra* note 177.

300. *See supra* note 176 and accompanying text.

301. *See* Parker, *supra* note 191.

number of forged deeds purport to be executed *after* the owner has passed away.[302] Given this, it makes sense to confirm that an alleged grantor even *could have* executed a deed. Likewise, Deed Registers could demand additional evidence before recording a document supposedly executed by a decedent. The probate process generates a court order appointing a personal representative and validating a will. Predicating the transfer of a decedent's real property on an applicant furnishing one of these forms of proof would make it harder to manufacture a fake deed to a decedent's property.[303]

Short of granting Deed Registers a discretionary rejection power, an alternative reform could authorize officials to file an optional irregularity report alongside any suspicious deed. This procedure would provide constructive notice of irregularities that call into question a deed's authenticity. It would also create a contemporaneous public record useful to potential contestants in subsequent deed-forgery litigation. Unlike a discretionary rejection power, an irregularity report would accompany—but not invalidate—the suspicious deed, thereby avoiding procedural delays that could undermine the Recording Act's notice function and property law's priority-of-ownership doctrine. To limit the duration of uncertainty created by a recorded irregularity, such reports could be expunged automatically by operation of law if no one contests the deed within a limitations period of one or two years.

Finally, the security vulnerabilities of recording procedures also raise new questions about the recent TODD trend. As mentioned above, sixteen states have enacted the URPTDA, which allows owners

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302. *See supra* note 294 and accompanying text.

303. There is precedent for such a measure: in Philadelphia, where posthumous deed forgery is quite common, the City Council enacted a 2010 ordinance mandating that deeds submitted on behalf of a decedent's estate be accompanied by a probate court order appointing a personal representative. *See* PHILA., PA., CODE tit. 2, § 2-202(2)(a) (2010). The ordinance also requires the Commissioner of Records to mail a copy of all recorded deeds to the prior owner within thirty days of recording. *Id.* § 2-202(6). In 2013, City Council enacted further legislation authorizing the establishment of a Real Estate Fraud Victims' Assistance Program to "serve as a 'one-stop' shop for the victims of real estate theft with the goal of ensuring that such victims receive hands-on assistance throughout the process to recover real property stolen through fraudulent recording of a deed." *Id*. § 2-206(1). Unfortunately, however, the city's Commissioner of Records has been criticized for failing to comply with these requirements. *See* McCoy, *A Philadelphia Story*, *supra* note 104. Furthermore, forgeries involving the impersonation of executors continued immediately after the city adopted the ordinance. *See* U.S. Attorney's Office, *Defendant Who Sold Homes He Did Not Own Gets 70-Month Prison Term*, FBI PHILA. (July 31, 2014), https://www.fbi.gov/contact-us/field-offices/philadelphia/news/press-releases/defendant-who-sold-homes-he-did-not-own-gets-70-month-prison-term [https://perma.cc/P37N-YT95].

of real property to convey title at death outside of probate by designating a beneficiary directly on the deed itself.[304] The URPTDA does not address forgery anywhere in its statutory content or comments.

The Reporter's comments, however, do contain two brief remarks concerning fraud. First, it explains that the requirement of a notarized certificate of acknowledgement "helps to prevent fraud."[305] But we know from the rash of notarized forged deeds that acknowledgment does very little to prevent forgery. Second, the Reporter's comment notes that the statutory mandate to record all TODDs "before the transferor's death"[306] "helps to prevent fraud by ensuring that all steps necessary to the effective transfer on death deed are completed during the transferor's lifetime. The requirement of recordation before death also enables all parties to rely on the recording system."[307] Deed forgers, however, have already outsmarted this protection by recording forged deeds shortly before the transferor's death.[308] Furthermore, the failure of Deed Registers to authenticate deeds before recording them undermines any reliance on the recording system to detect or prevent forgery. Accordingly, states should not pass TODD legislation until Deed Registers enhance their antiforgery practices.

C. Beneficiary Designations

As we have observed, life insurance carriers have not taken adequate steps to insulate beneficiary designations from forgery.[309] This Section argues that two subtle doctrinal changes would prompt companies to fix these flaws.

The reason that life insurers have created such half-hearted formalities is simple: they enjoy virtual impunity from the consequences of paying the wrong person. Comparing these entities to financial-service enterprises is instructive. Federal law gives banks strong incentives to monitor consumer transactions by capping consumer liability for fraudulent charges, thereby shifting the lion's

304. *See supra* note 121 and accompanying text.

305. UNIF. REAL PROP. TRANSFER ON DEATH ACT § 9(1) cmt. (UNIF. LAW COMM'N 2009).

306. *Id.* § 9(3).

307. *Id.* § 9(3) cmt.

308. *See supra* note 284 and accompanying text.

309. *See supra* Part II.C.

share of risk to the firm.[310] Also, regulations designed to combat money laundering and terrorism require banks to verify the identities of their customers.[311] As a result, these entities take security seriously, and even go so far as to block the accounts of clients who do not reply to authentication inquiries.[312] Likewise, ratcheting up the pressure on life insurance companies by imposing greater liability would force them to revamp their antiforgery safeguards. For instance, carriers might abandon misguided norms, such as requiring new irrevocable beneficiaries to sign the policy.[313] Even better, they could experiment with novel procedures, such as offering an online password-protected designation process or sending an automatic email or text message to the insured notifying her of policy changes.[314] To catalyze these reforms, however, insurers must internalize the costs of forgery disputes.

One way to accomplish this goal would be to reject carriers' requests for litigation expenses in interpleader actions. To be sure, "the general rule is that a disinterested 'mere stakeholder' plaintiff who brings a necessary interpleader action is entitled to a reasonable award of attorneys' fees."[315] However, a handful of jurisdictions exempt insurers under the "normal-course-of-business" exception.[316] This carve out starts from the premise that fee awards are supposed to take the financial sting out of being forced to spend money to resolve

310. *See* 15 U.S.C. § 1666 (2018) (limiting consumer liability for timely reported billing errors to $50 for credit card charges not made by the accountholder).

311. *See* 31 C.F.R. § 1010.230 (2018) (establishing beneficial ownership authentication requirements for accounts held by legal entities); *Id.* § 1020.220(a)(2) (establishing bank authentication requirements for accounts held by individuals).

312. *See* Telis Demos & Michael Siconolfi, *Rules Designed To Catch Terrorists Cost This Unsuspecting Customer Her Bank Account*, WALL ST. J. (July 13, 2018, 11:30 AM), https://www.wsj.com/articles/rules-designed-to-catch-terrorists-cost-this-unsuspecting-customer-her-bank-account-1531495802 [https://perma.cc/TF85-M4U9].

313. *See supra* notes 227–28 and accompanying text.

314. Some companies have begun to enact similar measures. *See* BENEFICIARY CHANGE REQUEST, MASSMUTUAL, https://www.massmutual.com/efiles/life/pdfs/fr2265.pdf [https://perma.cc/J33P-YN4X] (allowing policyholders to elect to receive updates about the status of their beneficiary designations); *Commonly Asked Questions—Beneficiaries*, NORTHWESTERN MUTUAL LIFE INS. CO., https://www.northwesternmutual.com/faq/#beneficiaries [https://perma.cc/2M96-D98A] ("To view or change beneficiary information, go to the details page of your individual policy or investment account by logging in.").

315. Unum Life Ins. of Am. v. Kelling, 170 F. Supp. 2d 792, 793 (M.D. Tenn. 2001).

316. Chase Manhattan Bank v. Mandalay Shores Coop. Hous. Ass'n (*In re* Mandalay Shores Coop. Hous. Ass'n), 21 F.3d 380, 383 (11th Cir. 1994). For more such cases, see *infra* notes 318–20.

someone else's dispute.[317] Although the typical plaintiff *unexpectedly* finds itself caught between adversaries—and thus has no way to recoup its costs—an insurer *knows* that it will often need to ask for judicial intervention.[318] This certainty means these entities can simply plan for interpleader as an "ordinary cost of doing business."[319]

Courts that follow the normal-course-of-business exception also reason that carriers are not *neutral* bystanders. Instead, these firms have a stake in the outcome because interpleader exonerates them from "all liability in regard to the fund."[320] Seen through this prism, it is "unreasonable to award an insurance company fees for bringing an action which is primarily in its own self-interest.[321]

Admittedly, the normal-course-of-business exception "has been little followed and roundly criticized."[322] For example, the influential Wright and Miller treatise condemns it for ignoring powerful fairness concerns:

> Insofar as these decisions rest on the notion that the stakeholder benefits by being discharged, they are wrongly decided because all stakeholders benefit by being able to use interpleader and that alone does not negate the equitable considerations supporting an award of attorney fees. Further, the cost-of-business rationale fails to recognize

317. *See In re Mandalay Shores*, 21 F.3d at 383 (reasoning that fee awards compensate "innocent stakeholders who unwittingly come into possession of a disputed asset").

318. *See* Minn. Life Ins. v. Rings, No. 2:16-CV-00149, 2018 WL 4376793, at *3 (S.D. Ohio Sept. 14, 2018) ("Such cases are squarely within the normal course of business for insurance companies . . . ."); Guardian Life Ins. v. Gilmore, 45 F. Supp. 3d 310, 320 (S.D.N.Y. 2014) ("[M]inor problems that arise in the payment of insurance policies must be expected and the expenses incurred are part of the ordinary course of business." (quoting Metro. Life Ins. v. Mitchell, 966 F. Supp. 2d 97, 104 (E.D.N.Y. 2013))); *see also* Reliastar Life Ins. v. Moore, No. 1:CV-08-1942, 2010 WL 773457, at *5 (M.D. Pa. Mar. 1, 2010); OM Fin. Life Ins. v. At Need Funding, LLC, No. 4:08-CV-0103-HLM, 2008 WL 11337691, at *4 (N.D. Ga. Dec. 17, 2008).

319. *See* Travelers Indem. Co. v. Israel, 354 F.2d 488, 490 (2d Cir. 1965) ("We are not impressed with the notion that whenever a minor problem arises in the payment of insurance policies, insurers may, as a matter of course, transfer a part of their ordinary cost of doing business to their insureds by bringing an action for interpleader."); Banner Life Ins. v. U.S. Bank, 931 F. Supp. 2d 629, 632 (D. Del. 2013) ("Awarding attorney fees to insurance companies would shift their ordinary business expenses to the claimants, which is not generally appropriate."); Sun Life Assurance Co. of Can. v. McElroy, No. 2:10-CV-488-RDP, 2010 WL 11615016, at *2 (N.D. Ala. June 3, 2010) (opining that an insurer that files an interpleader action engages in conduct that "it has already been paid premiums to perform").

320. Minn. Mut. Life Ins. v. Gustafson, 415 F. Supp. 615, 618–19 (N.D. Ill. 1976).

321. *Id.* at 619.

322. Waters Edge Living, LLC v. RSUI Indem. Co., No. 4:06CV334-RH/WCS, 2008 WL 11342633, at *2 (N.D. Fla. Nov. 17, 2008); *see also* Am. Gen. Life Ins. v. Russell, No. CV 16-851-JWD-RLB, 2018 WL 3240964, at *3 (M.D. La. July 2, 2018) ("[T]he Court will not take such a strict approach here.").

> that other equitable concerns should be consulted in determining whether fees or costs are warranted.[323]

Nevertheless, there are compelling reasons to treat forgery cases differently. The majority view may be correct that insurers should usually receive reimbursement when they use interpleader to resolve an incapacity or undue influence claim. In that situation, the company is not at fault: it cannot probe the mental acuity or intimate relationships of every policyholder who submits a beneficiary designation. Conversely, insurers often bear some responsibility for causing forgery litigation, as many of these lawsuits stem from poorly designed safety measures.[324] Likewise, as decisions like *Chesapeake Life Insurance Co. v. Parker* illustrate, firms often fail to detect flagrantly bogus signatures.[325] Lastly, when a carrier recovers its litigation expenses from the life insurance proceeds rather than from the losing party, impleader reimbursement unfairly forces the prevailing party to pay for someone else's litigation costs. Thus, the equitable considerations that normally entitle interpleader plaintiffs to recoup their costs do not always apply.

Judges could also wield a heavier hammer outside of the interpleader context. Despite the prevalence of facility-of-payment statutes, not every court has immunized insurers for distributing proceeds under a counterfeit form. In *Bigley v. Pacific Standard Life Insurance Co.*,[326] the Connecticut Supreme Court held that a company remained liable to the genuine beneficiary when it failed to detect a fake signature on a change-of-beneficiary request.[327] The state high court reasoned that the fraudulent paperwork was not effective because the insurance contract declared that only "[t]he owner . . . may

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323. 7 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 1719 (3d ed. 2001). Likewise, district judges who have expressed sympathy toward the exception have felt constrained by binding authority to the contrary. *See, e.g.*, Hearing v. Minn. Life Ins., 33 F. Supp. 3d 1035, 1043 (N.D. Iowa 2014) (describing the normal-course-of-business exception but ultimately yielding to Eighth Circuit authority), *aff'd*, 793 F.3d 888 (8th Cir. 2015); Melton v. White, 848 F. Supp. 1513, 1515 (W.D. Okla. 1994) ("[I]n the face of clear expressions favoring the award of attorney's fees by Tenth Circuit courts in this circumstance, the Court is unwilling to make an exception.").

324. *See supra* Part II.C.

325. Chesapeake Life Ins. v. Parker, No. 18-C-643, 2018 WL 2766205, at *1 (E.D. Wis. June 8, 2018) (denying forgery contestants summary judgment in insurance death-beneficiary designation contest); *see supra* notes 25–32 and accompanying text.

326. Bigley v. Pac. Standard Life Ins., 642 A.2d 4 (Conn. 1994).

327. *Id.* at 6.

change the [b]eneficiary."[328] In turn, because the wrongdoer—not the owner—submitted the bogus designation, it "did not comply with the terms of the contract and, therefore, did not effect a change of beneficiary."[329]

Unfortunately, *Bigley*'s precedential value is limited. Because Connecticut's facility-of-payment statute is narrow, it was not actually at issue in the case.[330] Instead, the decision is a purebred matter of contract interpretation. Moreover, the Supreme Court of Alabama and a Florida appellate court have called *Bigley* "unpersuasive," reasoning that it does not explain "why the insurer has a duty to discover forgeries but not to discover other irregularities, such as undue influence."[331]

However, the analysis above suggests that *Bigley* is correct to treat forgery distinctly. Insurers are not well situated to conduct a laborious investigation into whether a policyholder is competent and free from coercion. But they *can* prevent and detect fake beneficiary designations. Thus, if there is no governing facility-of-payment law, *Bigley* points in the right direction.

In fact, even in jurisdictions that have broad facility-of-payment statutes, carriers might still be on the hook in egregious fact patterns. As a general principle, these laws only protect insurers who release funds "in good faith" in reliance on a "form[] which appears regular in all respects."[332] This standard leaves the door open for courts to saddle companies with liability for failing to detect obvious forgeries.

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328. *Id.* at 7 (emphasis omitted).

329. *Id.* Similarly, the policy stated that it could be changed "during the lifetime of the Insured," and the forger submitted the form after the policyholder had passed away. *Id.* (emphasis omitted).

330. *Id.* at 7 n.7.

331. Fortis Benefits Ins. v. Pinkley, 926 So. 2d 981, 987–88 (Ala. 2005); Schwartz v. Guardian Life Ins. of Am., 73 So. 3d 798, 805 (Fla. Dist. Ct. App. 2011) ("*Bigley* presents no useful guidance . . . .").

332. *Fortis Benefits Ins.*, 926 So. 2d at 989; *see also* Crosby v. Crosby, 986 F.2d 79, 83 (4th Cir. 1993) ("[A]n insurer is discharged from all subsequent liability when it makes good faith payments to a purported beneficiary without notice of any competing claims."); Pabon Lugo v. MONY Life Ins. of Am., 465 F. Supp. 2d 123, 131 (D.P.R. 2006) (opining that the facility-of-payment law governs "[a]bsent any proof of bad faith, fraud or reckless disregard"); Schwartz v. Mony Grp., Inc., No. CIV.A. 03-2578, 2004 WL 1698675, at *5 (E.D. La. July 28, 2004) ("Although the facility of payment statute does not specifically refer to an insurer's 'good faith' payment of life insurance proceeds, it is well established that all contractual obligations in Louisiana must be performed in good faith."). *But see Schwartz*, 73 So. 3d at 808 ("[W]e decline to . . . impute a good faith requirement on the application of the statute . . . .").

CONCLUSION

The conventional wisdom about inheritance forgery is incorrect. The phenomenon is not rare, fictional, or anachronistic. To the contrary, it plagues wills, deeds, and life insurance beneficiary designations. And it has gone almost entirely unnoticed during a period of active reform in the field of decedents' estates. This Article has brought the problem into the light and suggested ways to solve it. By making donative transfers harder to counterfeit, the legal system can honor a decedent's wishes, deter wrongdoers, and protect rightful heirs and beneficiaries.

APPENDIX

Table 1: Will-Forgery Contests

Caption/Cite	**Year**	**Jurisdiction**	**Will Set Aside?**
Heard v. Lovett, 538 S.E.2d 434 (Ga. 2000)	2000	Georgia	Remanded for new trial
State v. Keith, Nos. 76469, 76479, 76610, 2000 WL 1176886 (Ohio Ct. App. Aug. 17, 2000)	2000	Ohio	Will forgery conviction
Perkins v. Swafford (*In re* Estate of Peery), No. E1999-02318-COA-R3CV, 2000 WL 222617 (Tenn. Ct. App. Feb. 28, 2000)	2000	Tennessee	Yes
In re Estate of Tinley, No. CIV.A. 1318-K, 2001 WL 765177 (Del. Ch. June 26, 2001)	2001	Delaware	Yes
In re Estate of Presutti, 783 A.2d 803 (Pa. Super. Ct. 2001)	2001	Pennsylvania	Yes
O'Keefe v. Burchett (*In re* Estate of O'Keefe), 833 So. 2d 162 (Fla. Dist. Ct. App. 2002)	2002	Florida	Yes
Kuerbitz v. Ballou (*In re* Estate of Moore), No. 232589, 2002 WL 31447117 (Mich. Ct. App. Nov. 1, 2002)	2002	Michigan	Yes
Moser v. Pollin, 294 F.3d 335 (2d Cir. 2002)	2002	New York	Lack of Jurisdiction
Stovall v. Mohler, 100 S.W.3d 424 (Tex. App. 2002)	2002	Texas	Yes
In re Estate of Luongo, 823 A.2d 942 (Pa. Super. Ct. 2003)	2003	Pennsylvania	No
Valentine v. Elliott (*In re* Estate of Delaney), 819 A.2d 968 (D.C. 2003)	2003	District of Columbia	Time-barred
Vieira v. Vieira, No. CV020172366S, 2004 WL 2361556 (Conn. Super. Ct. Sept. 14, 2004)	2004	Connecticut	Yes
Brown v. Brown, 592 S.E.2d 854 (Ga. 2004)	2004	Georgia	Yes

Jordan v. Fehr, 902 So. 2d 198 (Fla. Dist. Ct. App. 2005)	2005	Florida	Yes
In re Estate of Dalbec, No. A04-1524, 2005 WL 1619867 (Minn. Ct. App. July 12, 2005)	2005	Minnesota	No
In re Herman, 734 N.Y.S.2d 194 (App. Div. 2001)	2005	New York	No
In re Estate of Dane, 821 N.Y.S.2d 699 (App. Div. 2006)	2006	New York	No
Allahverdi v. Asadourian, Nos. B191586, B194739, 2007 WL 1806862 (Cal. Ct. App. June 25, 2007)	2007	California	Probable cause
Cline v. Cline, No. 05 CA 822, 2007 WL 901579 (Ohio Ct. App. Mar. 22, 2007)	2007	Ohio	Time-barred
Fletcher v. Harris, No. 14-05-00998-CV, 2007 WL 1152651 (Tex. App. Apr. 19, 2007)	2007	Texas	No (following bench trial)
Hoegh v. Estate of Johnson, 985 So. 2d 1185 (Fla. Dist. Ct. App. 2008)	2008	Florida	Yes
Estate of Brando v. Douglas (*In re* Estate of Brando), No. B209699, 2009 WL 2263557 (Cal. Ct. App. July 30, 2009)	2009	California	Time-barred
In re Estate of Cruciani, 986 A.2d 853 (Pa. Super. Ct. 2009)	2009	Pennsylvania	Yes
In re Estate of Sand, No. A-1856-08T1, 2010 WL 4272828 (N.J. Super. App. Div. Nov. 1, 2010)	2010	New Jersey	No
In re Will of Engelhardt, 950 N.Y.S.2d 608 (Sur. Ct. 2010) (unpublished table decision)	2010	New York	No
In re Morrissey, 898 N.Y.S.2d 1 (App. Div. 2010)	2010	New York	Yes
Haisler v. Coburn, No. 10-09-00275-CV, 2010 WL 2953372 (Tex. App. July 28, 2010)	2010	Texas	No
Duffer v. Richards (*In re* Estate of Richards), No. B226261, 2011 WL 6062018 (Cal. Ct. App. Dec. 21, 2011)	2011	California	Yes

In re Estate of Taylor, 936 N.Y.S.2d 61 (Sur. Ct. 2011) (unpublished table decision)	2011	New York	No
In re Estate of Werner, 960 N.Y.S.2d 53 (Sur. Ct. 2011) (unpublished table decision)	2011	New York	No
In re Estate of Greene, 932 N.Y.S.2d 544 (App. Div. 2011)	2011	New York	Triable issue of fact
Kruzek v. Estate of Kruzek, No. 1-12-1239, 2012 WL 6861498 (Ill. App. Ct. Dec. 17, 2012)	2012	Illinois	No
In re Estate of Angstadt, Nos. 1355 EDA 2013, 1356 EDA 2013, 2014 WL 10919557 (Pa. Super. Ct. June 4, 2014)	2014	Pennsylvania	No
Waters v. Iverson (*In re* Estate of Waters), No. 1-13-1262, 2014 WL 4402826 (Ill. App. Ct. Sept. 5, 2014)	2014	Illinois	Yes
Castor v. Pulaski, 985 N.Y.S.2d 380 (App. Div. 2014)	2014	New York	Yes
In re Estate of Pendergrass, No. 2010-X0189, 2014 WL 11201432 (Pa. Ct. Com. Pl. Oct. 14, 2014)	2014	Pennsylvania	Yes
Guidi v. Hess (*In re* Estate of Kalous), No. E059204, 2015 WL 5838246 (Cal. Ct. App. Oct. 7, 2015)	2015	California	No
In re Estate of Rothberg, Nos. 2391 EDA 2014, 2795 EDA 2014, 2015 WL 6954970 (Pa. Super. Ct. June 26, 2015)	2015	Pennsylvania	No
In re Estate of Folcher, 135 A.3d 128 (N.J. 2016)	2016	New Jersey	Yes
Ward v. Powers (*In re* Estate of Ward), Nos. 327991, 329132, 2016 WL 5887857 (Mich. Ct. App. Oct. 6, 2016)	2016	Michigan	Yes
In re Estate of Kiefner, No. 745 WDA 2015, 2016 WL 4938157 (Pa. Super. Ct. July 8, 2016)	2016	Pennsylvania	No

Estate of Konjolka v. Brown (*In re* Konjolka), No. 1664 WDA 2015, 2017 WL 2704070 (Pa. Super. Ct. June 22, 2017)	2017	Pennsylvania	Yes
In re Estate of Field, 414 P.3d 1217 (Kan. Ct. App. 2018)	2018	Kansas	Yes
Peterson v. Kolinske (*In re* Estate of Kolinski), No. 338327, 2018 WL 1833469 (Mich. Ct. App. Apr. 17, 2018)	2018	Michigan	Settlement agreement
Subtotal: 44			

Table 2: Deed-Forgery Litigation

Caption/Cite	**Year**	**Jurisdiction**	**Deed Set Aside?**
In re Estate of Dugger, No. 224629, 2000 WL 1528710 (Del. Ch. Sept. 29, 2000)	2000	Delaware	Yes
Bedree v. Bedree, 747 N.E.2d 1192 (Ind. Ct. App. 2001)	2001	Indiana	Yes
Estate of Acuff v. O'Linger, 56 S.W.3d 527 (Tenn. Ct. App. 2001)	2001	Tennessee	Triable issue of fact
Williams v. Nelms, No. 14-01-00907-CV, 2002 WL 31599496 (Tex. App. Nov. 21, 2002)	2002	Texas	Yes
Morrison v. Estate of DeMarco, 833 So. 2d 180 (Fla. Dist. Ct. App. 2002)	2002	Florida	Yes
Webb v. Greer, No. 235424, 2003 WL 21675879 (Mich. Ct. App. July 17, 2003)	2003	Michigan	Yes
Cazares v. Cosby, 65 P.3d 1184 (Utah 2003)	2003	Utah	Triable issue of fact
Pope v. Saget, 817 N.Y.S.2d 1 (App. Div. 2006)	2006	New York	Yes
Estate of Pippins v. Pippins (*In re* Estate of Pippins), No. A116677, 2007 WL 3409392 (Cal. Ct. App. Nov. 16, 2007)	2007	California	Yes
Bryant v. Bryant, 856 N.Y.S.2d 22 (Sur. Ct. 2007) (unpublished table decision)	2007	New York	Yes
Cruz v. Cruz, 832 N.Y.S.2d 217 (App. Div. 2007) (unpublished table decision)	2007	New York	Yes
El-Yacoubi v. Hetrick (*In re* Hetrick), 379 B.R. 612 (Bankr. E.D. Va. 2007)	2007	Virginia	Yes
Casonhua v. Wash. Mut. Bank, Nos. B218606, B218608, 2010 WL 4193214 (Cal. Ct. App. Oct. 26, 2010)	2010	California	Yes
Travers v. Brown, 899 N.Y.S.2d 628 (App. Div. 2010)	2010	New York	Yes

First Nat'l Bank of Nev. v. Williams, 904 N.Y.S.2d 707 (App. Div. 2010)	2010	New York	Triable issue of fact
Aurora Loan Servs., LLC v. Veatch, 710 S.E.2d 744 (Ga. 2011)	2011	Georgia	Yes
Layne v. Adkins, No. E2010-02189-COA-R3-CV, 2011 WL 13164949 (Tenn. Ct. App. Aug. 22, 2011)	2011	Tennessee	Yes
Grimes v. Grimes, 975 N.E.2d 496 (Ohio Ct. App. 2012)	2012	Ohio	Yes
In re Estate of Whipple, No. 04-11-00645-CV, 2013 WL 1641414 (Tex. App. Apr. 17, 2013)	2013	Texas	Triable issue of fact
Bohrer v. Atkins, 21 N.E.3d 186 (Mass. App. Ct. 2014) (unpublished table decision)	2014	Massachusetts	Yes
In re Marini, 989 N.Y.S.2d 487 (App. Div. 2014)	2014	New York	Yes
Ramos v. Turvey, No. 988 EDA 2013, 2014 WL 10920381 (Pa. Super. Ct. May 13, 2014)	2014	Pennsylvania	Yes
Henties v. Schweppe, No. 03-13-00593-CV, 2014 WL 2568490 (Tex. App. June 3, 2014)	2014	Texas	Yes
Faison v. Lewis, 32 N.E.3d 400 (N.Y. 2015)	2015	New York	Yes
Raccioppi v. Modeste (*In re* Raccioppi), 10 N.Y.S.3d 131 (App. Div. 2015)	2015	New York	Triable issue of fact
In re Tenzer, 43 N.Y.S.3d 62 (App. Div. 2016)	2016	New York	Yes
Wilson v. Pickel, No. E2015-01472-COA-R3-CV, 2016 WL 3595505 (Tenn. Ct. App. June 27, 2016)	2016	Tennessee	Triable issue of fact
Meyers v. Meyers, No. HHDCV166067348S, 2017 WL 6601588 (Conn. Super. Ct. Nov. 22, 2017)	2017	Connecticut	Probable cause for prejudgment remedy
Deramo v. Laffey, 52 N.Y.S.3d 119 (App. Div. 2017)	2017	New York	Yes
Subtotal: 29			

Table 3: Life Insurance Beneficiary Form Forgery Litigation

Caption/Cite	**Year**	**Jurisdiction**	**Transfer Set Aside?**
Oto v. Metro. Life Ins., 224 F.3d 601 (7th Cir. 2000)	2000	Illinois	Yes
Metro. Life Ins. v. Biggs, 68 F. App'x 644 (6th Cir. 2003)	2003	Michigan	No
Dimattia v. Jackson Nat'l Life Ins., 923 So. 2d 126 (La. Ct. App. 2005)	2005	Louisiana	Triable issue of fact
State Farm Life Ins. v. Vivian, No. CIV S-05-1738 WBS EFB PS, 2006 WL 3734666 (E.D. Cal. Dec. 18, 2006), report and recommendation adopted, No. CIV-S-05-1738 WBS EFB PS, 2007 WL 430737 (E.D. Cal. Feb. 6, 2007)	2006	California	Forgery claim settled
Alcini v. Nw. Mut. Life Ins., No. CV 08-2889-VBF(AJWX), 2008 WL 11337727 (C.D. Cal. Nov. 19, 2008)	2008	California	Triable issue of fact
Pan-Am. Life Ins. of Am. v. Pinto, No. 05-22969-CIV, 2008 WL 2627708 (S.D. Fla. July 3, 2008)	2008	Florida	Yes
Castro v. Ballesteros-Suarez, 213 P.3d 197 (Ariz. Ct. App. 2009)	2009	Arizona	Yes
Feehan v. Feehan, No. 09 CIV. 7016(DAB)(THK), 2010 WL 3734082 (S.D.N.Y. July 26, 2010), report and recommendation adopted, No. 09 CIV. 7016(DAB), 2010 WL 3734079 (S.D.N.Y. Sept. 22, 2010)	2010	New York	Triable issue of fact
Metro. Life Ins. v. Thomas, No. 1:10-CV-00290, 2011 WL 2470001 (W.D. Mich. June 20, 2011)	2011	Michigan	No
Czyz v. Hartford Life & Accident Ins., No. 1:08-CV-00767 MV/RHS, 2011 WL 13269505 (D.N.M. Mar. 31, 2011)	2011	New Mexico	No
Companion Life Ins. v. Saddler, C/A No. 3:11-314-JFA, 2012 WL 252789 (D.S.C. Jan. 26, 2012)	2012	South Carolina	Yes

Guardian Life Ins. of Am. v. Bowes, No. 6:11-CV-00040, 2012 WL 1378556 (W.D. Va. Apr. 20, 2012)	2012	Virginia	No
Metro. Life Ins. v. Beals, No. 1:12-CV-3309-WBH, 2014 WL 11822761 (N.D. Ga. Feb. 5, 2014)	2014	Georgia	Triable issue of fact
Metro. Life Ins. v. Washington, No. 8:14-CV-00886-T-24TBM, 2015 WL 5125205 (M.D. Fla. Aug. 31, 2015)	2015	Florida	No
Jackson Nat'l Life Ins. v. Estate of Morgen, No. 13-2936(MAH), 2015 WL 12791379 (D.N.J. May 19, 2015)	2015	New Jersey	Triable issue of fact
Jackson Nat'l Life Ins. v. Pettis, No. 13-CV-2850-SHL-CGC, 2015 WL 12826634 (W.D. Tenn. Oct. 13, 2015)	2015	Tennessee	Impleader granted on forgery claim
Angelucci v. Aglialoro, No. A-0369-14T2, 2016 WL 854452 (N.J. Super. Ct. App. Div. Mar. 7, 2016)	2016	New Jersey	No
Am. Nat'l Ins. v. Hansen, No. 8:17-CV-341-T-30JSS, 2017 WL 4355597 (M.D. Fla. Oct. 2, 2017)	2017	Florida	Triable issue of fact
Davis v. Davis, No. 3:15-CV-3-WKW, 2017 WL 3820962 (M.D. Ala. Aug. 31, 2017)	2017	Alabama	No
Prudential Ins. of Am. v. Shuler, No. 1:16-CV-3967-SCJ, 2017 WL 8186688 (N.D. Ga. Sept. 22, 2017)	2017	Georgia	Yes
Chesapeake Life Ins. v. Parker, No. 18-C-643, 2018 WL 2766205 (E.D. Wis. June 8, 2018)	2018	Wisconsin	Triable issue of fact
Subtotal: 21			