

CONTESTING A WILL

Losing a loved one is upsetting, confusing and one of the most difficult times to go through. The grieving process can be made even more difficult when there is a dispute over a Will. Whether this is because you have been unfairly left out of a Will, not been adequately provided for or you are acting as an Executor and someone else is contesting a Will then we can help you. This is often known as "Contentious Probate". We have extensive experience in dealing with complex and not so complex Will disputes.

If you require advice then contact us and we can give a free initial assessment and consider means of funding a claim or defence with you.

What is Contentious Probate?

This is the term used for any form of dispute arising in relation to the distribution of the estate of somebody who has died, including the following type of claims:

1. Claims under the Inheritance (Provision for Family and Dependants) Act 1975 ("the Inheritance Act") on the basis you have not been provided with reasonable financial provision from the estate.
2. Claims challenging the validity of a Will on the basis of:
 - Lack of mental capacity
 - Undue influence
 - Lack of knowledge or approval
 - Failure to comply with the strict formalities of executing a Will
 - Revocation by a later Will
 - Fraud and/or forgery
3. Claims to revoke a Grant of Representation improperly obtained.
4. Claims seeking the direction of the Court regarding the administration of the estate including applications to remove and replace Executors/Trustees where it is alleged they have acted in breach of trust.
5. Claims relating to Trusts.
6. Claims for rectification of a Will where it can be shown it does not represent the deceased's intentions.
7. Disputes between beneficiaries and Executors or between co-Executors.

In addition we can also provide advice if a Will is valid but you believe the Solicitor who drafted it may have been negligent in carrying out the deceased's wishes.

We are strong advocates of attempting to resolve disputes using alternative forms of dispute resolution ("ADR") rather than the Court process through to a contested trial. ADR can include mediation, negotiations, and early neutral evaluation and these

methods can be particularly beneficial in resolving matters sooner and more cheaply so that everyone has an opportunity to move on in the grieving process for the loved one who has been lost. However, sometimes Court proceedings are necessary but that does not prevent opportunities for other means of resolution during the Court process.

The Inheritance Act and what it means for you

Generally speaking you are free to dispose of your assets as you wish, however, the law does provide protection for those who have been financially dependent on the deceased. This protection comes in the shape of the Inheritance Act which is there to help spouses, children, civil partners, co-habitees and other surviving dependents who have been left to cope without sufficient money to enable them to get by. If a Will or intestacy fails to make reasonable financial provision then this Act will come into play.

Many people make successful claims after unexpectedly finding they have not been properly provided for in such circumstances.

We can also help if you are an Executor or a beneficiary and someone else is contesting the Will for this reason.

Invalid Wills

A Will is an official legal document so there are certain rules that must be followed in order for the Will to be valid. These rules range from the relatively simple, such as a person writing the Will must be 18 or over, to the potentially complex such as the person writing the Will must be of sound mind. It is quite common for no one to realise the Will is invalid until the person making the Will has died and this often leaves friends and family in a difficult position.

In some cases mistakes can be rectified by applying to a Court to have the Will corrected. In other cases friends and family may end up in a dispute over what to do with the estate.

A Will is presumed to be valid if it is executed correctly unless one of the following grounds of challenge can be proven:

- A. Undue influence was placed on the deceased to draft the Will in those terms - this is more than just persuasion and requires proof that the deceased was coerced into signing the Will.
- B. Lack of mental capacity – whilst a diagnosis of a condition affecting the brain (such as dementia) can be persuasive it does not guarantee success in a mental capacity claim as the deceased may have had a lucid moment when signing the Will. It will be necessary for a medical expert to review the deceased's medical records and prepare a report on whether they would have had capacity.

- C. Lack of knowledge and approval – this is often linked to lack of mental capacity but can be raised as a challenge in its own right if you have reason to believe the deceased did not know the content or nature of what they were signing.
- D. Fraud or forgery – expert evidence would be required to show that the Will was not executed by the deceased.

Trust Disputes

Despite the deceased's best intentions when choosing their Executors the relationship between the Executors or between the Executors and the beneficiaries can sometimes become strained and break down. Disputes between Executors can arise for a number of reasons including one or more of the Executors refusing to comply with their legal duties or mismanaging the administration of the estate and, therefore, being in breach of trust.

An Executor (or administrator if no Will was made) owes a number of duties to the beneficiaries of the estate of which they will sometimes be unaware. These include keeping the beneficiaries informed about the progress of the administration (usually involving the provision of Estate Accounts showing the assets and liabilities of the estate) ensuring the assets of the estate are realised and liabilities are paid and being careful not to allow their personal interest to come into conflict with their duties as Executors.

Further difficulties can arise when more than one Executor (or administrator) is appointed in an estate and they cannot together agree the way forward with the administration. It is necessary for all the Executors to be in agreement for the administration to proceed and this will, therefore, sometimes cause deadlock.

If you as Executor or beneficiary are in such dispute, or where these problems arise, the Court has the power to make orders (called directions) about how the administration of the estate should proceed.

Professional negligence

When a Will is made you would expect your Solicitor or Will writer to give the right help and advice to ensure the Will is legally binding. Unfortunately, that is not always the case and professionals sometimes make mistakes.

A mistake made by a Will writer or Solicitor can have serious consequences. It is common for these mistakes to go unnoticed until the person making the Will has died, leaving their family and friends to deal with the repercussions.

If you have found yourself trying to deal with mistakes made in a loved one's Will we can help. We can consider whether the Solicitor or Will writer acted negligently; for example, if a Will turns out to be invalid or obvious tax implications have not been considered.

Common mistakes include:

- Not listening to a client properly
- Not checking ownership of property, meaning it is not passed on as intended
- Not writing the Will clearly enough to reflect the client's wishes
- Not giving proper tax advice
- Writing the Will so badly that the client's wishes cannot be understood so that one part of the Will might contradict another part
- Not making sure that the client was of sound mind and had the ability to make the Will
- Not making sure the Will was properly signed and witnessed

Sometimes these mistakes can be corrected and we will work with you and the Solicitor to try to put things right. If the mistake cannot be rectified you maybe able to claim compensation for any financial loss you have suffered as a result