

NEWS IN BRIEF

Contesting a Will - An Overview

With an ageing population, a dramatic increase in house prices and more complex family structures, will disputes are becoming increasingly common. Christopher John Berry, Solicitor specialising in Contentious Trusts and Probate, gives an overview of the various ways to contest a will or make claims against an Estate.

If you've been cut out of a will or you do not think you've been left enough . . .

If you have been left out of a friend or family member's will, or if you do not think you have been left enough, then you may be able to make a claim for reasonable financial provision under the Inheritance (Provision for Family and Dependants) Act 1975.

There are various classes of people that can make a claim including children, people treated as children (including step children), spouses and former spouses, and any person maintained wholly or partly by the Deceased before death (this could include wider family members, friends or partners).

If you have concerns about the validity of a will . . .

In some circumstances a will may not be valid. There are number of ways to contest a will and challenge its validity:

- Lack of mental capacity. With an ageing population, the rise in cases of dementia and a greater awareness of other mental health issues, there is a definite rise in challenges to wills on the basis the testator lacked mental capacity.
- If the person did not have the requisite mental capacity, the will is not valid.
- Lack of knowledge and approval of the terms of a will. This is often linked to lack of mental capacity but can also be argued in other cases such as where English is not the first language for example.
- If a person did not know and approve the terms of the will, the will is not valid.
- Undue influence. It is often the case that a testator makes a will at a time when they are particularly vulnerable, whether that is because of age or ill health, and this is open to abuse. If a person is forced into making a will, then the will is invalid.

- Fraud and forgery. If a will is forged or the signature is forged, then it is not valid. We can often get handwriting experts to provide evidence on this.
- Will not properly executed. There are certain formalities set out by the Wills Act 1837 which must be satisfied in order for a will to be valid. This includes a will being in writing, signed and witnessed. If a will is not properly executed, it is invalid.

If you've been promised an inheritance but the inheritance was not in the will . . .

In certain circumstances, a promise can be enforceable. If you were promised an inheritance and have not received it, and have relied on that promise to your detriment, then you may be able to make a claim.

If you would like a free initial consultation to discuss your situation and options open to you then contact me Chris Berry at:

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