

Contesting a Will

The passing of a loved one is incredibly challenging. Unfortunately, the stress at this time can become further enhanced should you be faced with the prospect of challenging the Will.

To challenge a Will, you will need to have sufficient grounds.

The Will

It should be understood that in England and Wales, testators have complete freedom to leave their assets, money and property to whomever they choose. This freedom should be honoured, provided that the Will in question is valid.

Testator – A Testator is someone that has drawn up a last Will and Testament.

Can I Contest a Will?

Whilst anyone can challenge a Will in principle, it is unlikely that you will receive anything from the estate unless you were part of the most recent Will (or the most recent Will that is deemed to be valid), or you are making a claim for reasonable financial provision under the Inheritance (Provision for Family and Dependents) Act.

Reasonable Financial Provision – The definition of reasonable financial provision will be dependent on the category the applicant falls into:

Spouse of the Deceased – reasonable financial provision will be determined as what is reasonable, rather than what is required to maintain them.

Other Applicant – reasonable financial provision **will be defined as 'such financial provision as it would be reasonable in all the circumstances of the case for the applicant to receive for his maintenance'**.

How To Dispute a Will

In order to successfully challenge a valid Will, you will need to present evidence that proves one of the following:

- The deceased lacked testamentary capacity
- The Will had not been correctly executed
- The deceased was subject to undue influence
- The deceased is not believed to have known or approved the contents of the Will
- The Will was forged

Explanations

Lack of Testamentary Capacity

The test for mental capacity is based in case law. At the time of creating a Will, the testator must be able to demonstrate the following:

- That they fully understand the nature of making a Will and the effects of it
- They understand the extent of the property of which they are leaving
- They fully comprehend and appreciate the claims to which they ought to give effect
- They have no disorder of the mind that perverts their sense of right or prevents the exercise of their natural faculties in disposing of their property by Will

An Incorrectly Executed Will

Section 9 of the Wills Act 1837 states that a Will is only valid if it complies with various terms:

- The Will is in writing

- The Will is signed by the testator or by someone else following the testator's direction
- It is clear that the testator's signature intended to give effect to the Will
- The signature that is made or acknowledged by the testator is done so under the presence of two witnesses who are not beneficiaries of the Will
- Two witnesses must attest and sign the Will in the presence of the testator, but not necessarily each other

Undue Influence

Undue influence refers to pressure applied by a third party so that the judgement of the testator is altered. The way in which pressure is applied by a third party may be verbal, physical or psychological. Whilst the nature of the influence does not matter, it must be determined that it overtook the free-thinking of the testator. Further details can be found here: [Undue influence](#)

Lack of Knowledge or Approval

If a Will has been executed correctly, it will be presumed that the testator had full knowledge of this and approved its contents. There are, however, cases where knowledge will not be presumed:

- If the testator is deaf and/or dumb
- If the testator cannot write or speak or is paralysed
- If the testator is blind or illiterate
- The Will has been signed by another person by the testator's direction

Further to this, if suspicious circumstances are to be found, lack of knowledge or approval could be argued. Where this is the case, it will become the burden of those claiming that the Will is valid to demonstrate evidence of this.

A Forged Will

There are various circumstances in which a claim for fraud or forgery may be made, although these circumstances may also overlap with lack of knowledge or approval.

Any Will that is found to have been forged or the result of fraud will be invalid and either the testator's previous valid Will or the rules of intestacy shall apply.

Contesting a Will: Timescales

It is advised that you seek legal advice immediately if you think you have grounds to contest a Will.

Any claim that is made under the Inheritance Act of 1975 will have to be made within 6 months of the grant of probate.

Where a Will has been left, a claim brought forward to challenge the validity of the Will must be done so within 12 years of the deceased passing.

No time limit applies to cases involving fraud.

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