

## Disappointed by a Will?

It can be a hugely emotional and challenging time when a close relative or friend dies. These difficult circumstances can be made all the more testing when, as is often the case, that person dies leaving no will (this is known as an “intestacy”), or they leave behind a will that arises suspicion, does not seem to reflect their true wishes, or is simply not as you would have anticipated.

If you find yourself in this situation, there are a number of potential routes and remedies that may be available to you. Although litigation can be a very effective means of resolving disputes, it is not always the case that you would need to go to Court, and with legal assistance these issues can often be resolved in an amicable and successful manner without recourse to formal proceedings. Outlined below is an introduction to some of the legal routes that may assist you.

### Inheritance Act 1975 Claims

This kind of claim would be available to the following categories of people (although some only in specific circumstances):

- Spouse/civil partner of the deceased;
- Former spouse/former civil partner of the deceased;
- Child of the deceased;
- Any person treated as a child of the family (by virtue of the deceased’s marriage);
- Cohabitee;
- Any other person who immediately before the death of the deceased was being maintained by the deceased.

With a claim of this type, you would not challenge the validity of the will itself, but rather be claiming for an amount out of the deceased’s estate on the basis that the will (or lack of) failed to adequately provide for you. The court has been known to make very sizeable awards under these provisions and a resolution may also be agreed outside of proceedings.

For non-spousal claims, the amount you could claim would be referable to what is required for your maintenance, whereas for spouses what is important is whether what has been provided to you is reasonable.

### A promise

Perhaps you were promised a gift by the deceased that would take effect on their death. In some situations this can create an obligation on the part of the deceased, and if you are subsequently disappointed by the provisions of their will you may still be entitled to an award from the estate to take into account that promise.

Say for example you had lived with your sister in her house for many years. She had always said that if anything happened to her the house would be yours. On the basis of this understanding you had helped to decorate the house, paid some of the bills, paid for refurbishments, and failed to make your own provision for a separate property. Your sister dies suddenly and unexpectedly and does not leave in place a will to reflect her promise to you. Under the intestacy rules (those that apply where there is no will), the house passes to her children, from whom she was estranged. This is clearly an unjust situation and you may have a claim against the estate.

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### Validity of the will

You may have concerns as to the validity of the last will of the deceased. If a will is declared invalid, the previous will can be proved or the estate may otherwise pass under the intestacy rules. A will can be declared invalid on a number of grounds, namely:

- a Failure to comply with the execution formalities;
- b The deceased lacked capacity;
- c The deceased did not know and approve the contents of their will;
- d The deceased was subject to undue influence or the will is a result of fraud.

### Formalities

There are certain formal requirements a will must comply with in order to be valid. Broadly speaking, it must be in writing and signed by the testator in the presence of two or more witnesses. The witnesses and their spouses must not receive anything under the will. Any codicils must also fulfil these requirements. It must be established that the will has not been revoked, for example this can sometimes occur by preparation of a further will in another jurisdiction if that will is not worded correctly.

### Lack of capacity

The deceased must have had 'testamentary capacity' in order to make a valid will. This means that they should have understood the nature, meaning and effect of making a will, the extent of the property they were disposing of, and appreciated any potential claims against the estate.

It is difficult to assess whether someone had capacity at the time a will was made, but if you are in any doubt, it may assist for you to instruct a solicitor who can carry out investigations on your behalf. For example, contemporaneous evidence from the time the will was drafted and executed can be requested and reviewed, as can the deceased's medical records, and evidence from friends and family. This can help you in deciding whether or not it would be appropriate to bring a claim, assist with negotiations with other parties, and form part of the requisite documentary evidence should you ultimately proceed with court action.

### Knowledge and approval

It is usually presumed that a testator knew and understood the terms of his will and approved its contents. However where, for example, the testator was blind or illiterate, or a beneficiary was involved in the preparation or execution of the will, knowledge and approval will not usually be presumed. Responsibility will rest on the person trying to prove the will to demonstrate that this has been satisfied. The Court would consider contemporaneous evidence from the time the will was made, for example evidence of the deceased's instructions for the will, or that the will was read out to the testator.

### Undue influence/fraud

To establish undue influence you would need to prove that a testator was forced into making a will that went against his wishes, and the threshold is higher than that of mere persuasion. Similarly, if the testator's mind was deliberately poisoned against certain individuals such that they are disinherited, the will can also be declared invalid.

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The will may even have been forged. This is a very serious allegation and the court will require a high level of evidential proof.

### Lifetime gifts

Lifetime gifts made by the deceased are also susceptible to challenge in certain circumstances. For example issues such as a lack of capacity and/or undue influence as described above may be relevant.

### What to do next

If you suspect that you may have a claim against the estate of a friend or relative or that their will could be invalid it is advisable to contact a solicitor at the earliest opportunity. Where the validity of the will is in dispute, this is usually much easier to resolve before the estate administration commences. Your solicitor can, if appropriate, lodge a "caveat" at the Probate Registry. This effectively prevents the estate administration from getting underway and can remain in place until the dispute is resolved.

There are also certain legal time limits in place that you should be aware of, for instance you only have a short window of time in order to bring an Inheritance Act claim. A solicitor can ensure your claim is brought promptly and within the requisite time frame.

A solicitor can advise on the appropriate claims for you to consider, assess the merits and strength of these claims, and assist you in collating the necessary documentary evidence. Out of court negotiation and settlement will be encouraged where suitable, and if necessary and appropriate a solicitor will guide you through formal court litigation.

This information sheet provides an introduction to the various legal routes that may be available to you, however it is no substitute for professional advice. For more comprehensive and specific guidance please contact the Contentious Probate team on 01892 510000.

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