



Contentious Probate – What is it?

A Contentious Probate or Disputed Will is a dispute involving inheritance or the validity of a Will. It is a disagreement after someone has passed away about the distribution of their estate. A dispute could stem from you feeling the Will didn't leave you what you feel you deserved or promised, or you may have concerns regarding the way in which the Will was made. It also applies if someone didn't make a Will.

The main piece of legislation for Contentious Probate is the Inheritance (Provision for Family and Dependents) Act 1975.

It is important to be aware that there are strict time restrictions if you do wish to claim. Any claim must be made within 6 months of the grant of probate or letters of administration (if the deceased did not make a Will).

What are the grounds to Contesting a Will?

You can contest a Will either because the process of making the Will did not to comply with the law or there were other issues rendering the Will is invalid. The main areas of contentious probate where you are able to contest a Will are:

- **Lack of Mental Capacity**

If the person making a Will lacked mental capacity at the time. If the deceased lacked capacity and didn't fully understand the meaning and effect of what was in the Will.

- **Undue Influence**

If the person who made the Will was subjected to undue influence and coercion.

- **Lack of Knowledge and Approval**

A Will can also be contested if you think the person who signed it did not realise, they were making a Will or did not know what the Will said.

- **Fraud and Forgery**



If the intentions of the person making a Will are not contained within their Will, the Will could be contested on the grounds of fraud. Fraud would have been committed if someone had intentionally sought to deceive another for personal gain.

Forgery is an act of fraud, whereby someone has forged the signing of a Will, claiming it to be signed by the deceased.

- **Legal formation of a Will under The Will Act 1987**

There are a number of things that you have to comply with under statute in order for a Will to be valid. The Will must have been made in writing, voluntarily and without influence. The person who wrote the Will must have been over the age of 18, of sound mind, in the presence of two witnesses. The two witnesses must have signed the Will, in the presence of the person who created the Will and the person making the Will must have signed it also.

Can I Claim?

To make a claim under the Act, you must be a person who fits into one of the categories of people listed in the Act (section 1(1)). These categories include: a spouse of the person who has passed away, a former spouse of the person who has passed away (ONLY if you have not remarried), a partner who lived with the deceased for at least 2 years immediately before the death, a child of the person who has passed away, a person who was treated as a child of the family by the person who passed away, or someone who was supported financially (partly or totally) by the person who has died.

If you can apply one of those categories to your particular circumstances, you may be entitled to make a claim under the estate.

Do you need help

Losing a loved one is an emotional and distressing time. The issues concerning contested probate can be complex. Our team of contentious probate specialists look at a wide range of factors, from family disputes to difficulties regarding testamentary capacity and undue influence.

If you are concerned about how a Will was made, considering making a claim, or are concerned about how someone's estate is being distributed, call one of our specialist probate solicitors on **01926 356000** who will be able to assist.