

Guide to Contentious Probate Claims

A contentious probate claim 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.

Can I Claim?

Firstly, you need to be clear on the basis upon which you dispute the will. Ask yourself these three questions:

- Do you think the will is invalid?
- Do you believe insufficient financial provision has been made for you in the will?
- Do you believe the will does not reflect what the deceased promised to you?

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

Inheritance Act Claims

The main piece of legislation for claims of this type is the *Inheritance (Provision for Family and Dependants) Act, 1975*. To make a claim under the Act, you must be a

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person who fits into one of the categories of people listed in the Act in *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.

Further, you must be able to show financial dependence on the deceased, more or less immediately before they passed away and that the will or the planned distribution of the Estate does not adequately provide for you.

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).

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If you don't fit into the framework set out above, you may still have a way to contest the content of a will.

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.

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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 Wills Act 1837

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.

Next Steps

When you obtain a copy of the will it is important to review the document and the circumstances surrounding its creation. If the document has been created by a firm of solicitors, they can be approached to provide evidence of the circumstances surrounding its creation and also the witnesses can be approached.

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Individuals in the deceased's life should be contacted and the deceased's medical history considered. This is important to determine if undue influence occurred and whether testamentary capacity was present when the will was made.

Maybe the deceased had dementia or mental health issues. Possibly evidence from witnesses of pressure from relatives may shed light on the change in character of the deceased at the time the will was drawn up. The GP could also be asked to comment on any medical conditions the deceased had and whether any treatment may have affected their mental state.

All steps should be taken to shed light on the life and mental state of the deceased at the time the will was drawn up to determine exactly why the provisions were made as they were. Once this evidence has been gathered a decision can be made as to the merits of your case.

Do you need help?

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

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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 the Dispute Resolution Department on 02477 710235.



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