

CONTESTING A WILL



CHALLENGING OR CONTESTING A WILL OR APPLYING FOR A STATUTORY WILL

Disputes about existing Wills, or the fact that no Will has been made can make things harder than necessary.

WHAT IS A WILL?

If you need help with disputing or contesting a Will, or perhaps if there are disputes relating to the probate, our Team can offer expert advice.

Our Team can advise if:

- You do not think a Will is valid and want advice on contesting a Will
- You do not think that you have been properly provided for in a Will or intestacy (where there is no Will)
- Someone is disputing or contesting a Will or making a claim against a Will/Estate and you need to defend the claim.

GROUNDINGS FOR CONTESTING A WILL

If there is a dispute about a Will, it can be very difficult for family and for Executors alike. The Court will consider the validity of a Will for the following reasons:-

- Lack of testamentary capacity
- Lack of knowledge and approval
- Undue influence
- A fraudulent or forged Will
- Lack of valid execution of the Will
- The Will needs to be rectified or there is a dispute about the way in which the Will should be construed

Our Team have a wealth of experience in this area of the law and will advise you on the issues, what steps can be

taken to protect your position and what investigation needs to be undertaken to establish whether the Will should be relied upon.

CLAIMS AGAINST ESTATES

Sometimes when someone dies those close to them will feel that they have not been properly provided for under the terms of a Will or through an intestacy. In those circumstances claims can sometimes be made under the Inheritance (Provision for Family and Dependents) Act 1975.

Whether you are wishing to make a claim or trying to defend a claim that is being brought against an Estate, our Team can advise on the way forward and will work to achieve a resolution for you that preserves as much of the Estate as possible.

MAKING A DEPENDENCY CLAIM ON DEATH

In some circumstances, when someone dies their Will (or lack of a Will) results in a failure to make reasonable provision for those left behind who were financially dependant upon them before they died.

In those cases it can often be possible to bring a claim under the Inheritance (Provision for Family and Dependents) Act 1975.

WHO CAN CLAIM?

The Act does not allow everyone who thinks they should have been mentioned in a Will to bring a claim – only certain classes of dependants can claim which includes:

- A spouse or civil partner
- A former spouse or civil partner
- Someone who has cohabited with the deceased for at least two years prior to death



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- Children of the deceased and those treated as children of the deceased by them
- Anyone else who was maintained by the deceased immediately before they died

Courts will not easily change the provisions of a Will but where it is agreed or decided that a Will (or intestacy) does not make reasonable financial provision for the applicant the Act allows an adjustment to be made.

In many cases, it will be clear that reasonable financial provision has not been made and it can be possible to negotiate an agreed adjustment to the Will or intestacy so that Court proceedings can be avoided.

In other cases, it will be necessary to issue Court proceedings.

HOW MUCH WILL THE PROVISION BE?

The provision that will be made for someone who was dependant and who brings a claim under the 1975 Act, is that which is “reasonable”: this will be different in each individual case and will depend also upon the needs of other beneficiaries under the Will or intestacy.

ACT QUICKLY

If you think you might have a claim under the Inheritance (Provision for Family and Dependents) Act 1975 you should act quickly.

A strict 6 month time limit applies from the date a Grant of Probate or Grant of Letters of Administration is issued by the Probate Registry. Only in extreme circumstances can that time limit be exceeded.

WHY CHOOSE US? OUR EXPERIENCE

Our Team have a wealth of experience in acting for clients wishing to bring and to defend claims under the Inheritance (Provision for Family and Dependents) Act 1975. These include:

- claim brought by a co-habitee living in her late partner’s house, who would otherwise have been homeless when he died without making a Will and his Estate passed automatically to distant family members
- acting for children from a first marriage in defence of a claim by the deceased’s second wife for a larger share of his Estate
- acting for beneficiaries in an Estate where a dependency claim was made by the deceased’s co-habitee and agreeing terms for a small lump sum payment to be made rather than a life interest in property

The range of claims that may be brought or defended and the circumstances of each one are varied.

IS A STATUTORY WILL MORE APPROPRIATE?

If there is no Will or the provisions under the existing Will are no longer the wishes of the person and they are still alive but do not have testamentary capacity to make a Will, an application can be made to the court of protection to agree the terms of a Will in the best interests of the Person.

MAKING A WILL

Having a ‘proper’ professionally drafted Will by a regulated solicitor will help avoid problems in the first place.

Making a Will can provide you with peace of mind, knowing that in the event of your death your wishes will be carried out.

Your assets can be administered in the way you would want, setting out important choices such as your funeral arrangements, guardians for minor (young) children, and any gifts you wish to make.

REDUCING TAX LIABILITIES

When property prices increase, more and more people find that they are worth more than they thought and that their estates will be subject to Inheritance Tax.

Making a Will can enable you to plan for matters in a way that reduces the liability for Inheritance Tax.




REVIEWING YOUR WILL

The beauty of a Will is that you can change it whenever you want to. The chances are that if your Will is more than five years old, it may need updating.

You may find your family growing, you may find friends have come and gone or your own circumstances have changed.

FREE WILL HEALTH CHECKS

Here at Wilson Browne our Wills and Probate solicitors advise that you review your Will frequently (at times of change, such as marriage, birth of a child, divorce, etc.) to ensure your wishes are being met, and you have received the best advice in terms of tax planning.

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