

## Contested Wills and Provision for Dependents

### Obtaining Advice

Following bereavement, emotions run high and regrettably tensions can arise between the deceased's family and friends. While the deceased is usually entitled to leave their estate to whom they wish, this can be challenged if the will is invalid or proper provision has not been left for dependents.

It is important to obtain advice early on. The right to challenge a **will** or **intestacy** can be lost if there is any unreasonable delay. Prompt action, such as lodging a **caveat** at the Probate Court, can often prevent the distribution of the deceased's assets pending the resolution of any dispute.

Whether you are an **executor** of an estate, a **beneficiary** under a will or a dependent who has been passed over, we can assist you in bringing and defending probate claims and seeking alternative methods to resolve any dispute.

### Challenging the Validity of a Will

There are a number of grounds which entitle a person with sufficient interest to challenge part or the whole of a will, some of which are set out below.

#### Want of due execution

For a Will to be valid, it must usually be in writing and signed in the presence of 2 witnesses who also sign.

#### Capacity

The maker of the will must have mental capacity to sign the will. He must understand what he is doing, the extent of property being given away and appreciate the claims he ought to give effect to.

There is a presumption of sanity and persuasive evidence of lack of capacity will be required where the will was made before an experienced solicitor. Claims based on capacity largely turn on the strength of medical evidence.

#### Undue Influence, Sham or Fraud

Such allegations can often be hard to prove. A person can exert a bad influence on the will writer without this being sufficient to amount to undue influence.

The court will likely take greater interest in a party who prepares a will under which they receive a benefit.

#### Property Rights and Promises

Others, such as former cohabitants or business partners, may have an interest in property that is not registered in their name. Though not a claim against the validity of the will, any property rights that existed prior to death will usually continue and can be enforced.

Similarly the court will in limited circumstances enforce promises made by the deceased regarding their property or assets where such promises have been relied upon and it is inequitable for the estate to renege on this.

#### Mutual Wills

Mutual wills are wills executed by 2 individuals, usually in a relationship, disposing of their property in an identical fashion.

Such wills are rare as these may prevent the surviving individual from changing their will contrary to the terms of the previous mutual will.

#### Revocation

A Will is usually revoked by marriage, divorce, destruction of the will or by a later will being made.

### Inadequate Provision for Family and Dependents

#### Inheritance Act Claims

The Inheritance (Provision for Family and Dependents) Act 1975 provides for certain family and dependents to make a claim against an estate where reasonable financial provision has not been provided either by the deceased's will or on **intestacy**. We are experienced in bringing and defending Inheritance Act claims and can advise you on the potential pitfalls and cost implications.

#### Who can make a claim?

A claim can potentially be made by the deceased's:

- Spouse or civil partner
- Partner living with the deceased for at least 2 years
- Divorced spouse (in limited circumstances)
- Child
- Person treated as a child of the deceased
- Person being 'maintained' by the deceased immediately prior to his death

#### Time limit

There is a **6 month** time limit to bring an Inheritance Act claim from the date of **grant of probate**. This can be extended in exceptional circumstances.

#### What can be claimed?

If a claim is established the court has the power to make a wide range of orders against the estate such as a lump sum, trusts or periodic payments. A successful claimant is entitled from the estate to either:

- Such reasonable financial provision as is necessary for maintenance; or**
- Spouse / Civil Partner - reasonable financial provision**

#### Factors taken into account

If no reasonable financial provision has been made the court will consider the following factors in deciding how to exercise their powers:

- Financial resources and needs of claimants and other beneficiaries
- Deceased's moral obligation
- Size and nature of estate
- Capacity of claimant
- Claimant's conduct
- Duration of marriage
- Education requirements

### Glossary

<b>Administrator</b>	Person(s) appointed by the court to administer the deceased's assets upon an intestacy.
<b>Beneficiary</b>	Person entitled under will or intestacy to money or other asset from the deceased
<b>Caveat</b>	Formal request to the Probate court not to issue a grant of probate while a potential dispute remains outstanding
<b>Executor</b>	Person(s) appointed by a will to administer the deceased's assets
<b>Grant of Probate</b>	The authority from the Probate Court confirming the executors have the authority to act on the will
<b>Intestacy</b>	An intestacy arises where the deceased dies without leaving a will. The right to administer their estate and division of the deceased's assets and property are dealt with in accordance with a formula set down in law.

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