

Guide

Challenging a will: What you need to know

13 June 2024  Daniel Edwards

Dealing with the death of a loved one can be a difficult time for anyone, no matter the circumstances. But the situation can become even more stressful and upsetting if you feel that you have been unfairly treated in a will, or if there is no will at all for that matter. In those circumstances you might ask yourself “Can I challenge the Will?”

Perhaps you were promised something during the deceased’s lifetime, and their will doesn’t reflect that promise. Or maybe they made a change to their Will late in their life, or during a period of illness. They might have left an unusually large amount of their estate to somebody who only came into their life towards the end for a brief period, or even somebody you have never even heard of at all.

In any of those circumstances you might want to challenge their Will, or seek a greater share of the Estate than you would otherwise receive under the Will (or under an Intestacy if there is no Will).

What are the grounds for disputing a will?

There are more reasons than we can list here as to why somebody might want to challenge a will, but the ones that arise most commonly are:

- **Lack of capacity** – if the person making the will was seriously ill, suffering from memory loss, or extended bouts of confusion for instance, you might have good grounds to challenge the will.
- **Undue influence** – was the person making the will vulnerable, open to suggestion, being controlled by somebody close to them? If so, a will challenge might be possible.
- **Incorrect execution** – were the witnesses and the person making a will all together at the same time to witness each other’s signatures? If not, the will may well be invalid.
- **‘Inheritance Act’ claim** – have you been unfairly excluded from a valid will all together, or have you received far less than you feel is ‘fair’? You might be able to bring a claim under the Inheritance Act if that’s the case.
- **Estoppel** – If you were you promised something by the deceased that their will now fails to leave to you, you might have a claim based on ‘estoppel’.

Lack of capacity

If the person making the will did not have the requisite mental capacity to understand what they were doing their will may be invalid.

There is a strict legal test for this type of claim, and it is contained in the case of *Banks v Goodfellow*. A person merely being ill when they made their will, or having periods where their memory was not brilliant for instance, will not automatically be enough to have a will deemed invalid for lack of capacity.

Undue Influence

Unfortunately we all too often see people applying pressure to somebody making a will, to try and get them to give them more than they would otherwise received. We call this ‘undue influence’.

Often finding direct evidence that has happened is difficult, but circumstantial evidence can be compelling, and the courts are becoming increasingly open to the idea that 'undue influence' can be proven in this way. If it can be, then there will be a strong basis for disputing the validity of the will.

Incorrect execution

People often fail to appreciate the very particular ways in which a will needs to be signed and witnessed to be valid.

During the Covid19 pandemic there was an increase in people either making wills at home, or using a solicitor but 'remotely'.

Often people had difficulties ensuring both witnesses and the person making the will could all be present together at the same time. This has led to an increase in the number of wills being challenged owing to 'incorrect execution' of the will in question.

Inheritance Act

The Inheritance (Provision for Family and Dependants) Act 1975 (usually referred to as 'the Inheritance Act') is a piece of legislation that allows certain individuals to make a claim against an estate of a deceased person where they have not been given reasonable financial provision in their will (or as a result of an Intestacy). The Inheritance Act applies to all estates of people who die domiciled in England and Wales,

See our more detailed [article on the 'Inheritance Act'](#).

Conclusions

Those are just some of the types of [inheritance disputes](#) that can arise when somebody is not satisfied with the financial consequences of the death of a loved one.

It is important to take advice from somebody who specialises in handling only contentious probate matters, so as to ensure all possible claims are considered, and so that your options are set out to you clearly from the outset.

Seeking that advice early on is key, as there are short and strict time limits for disputing a will, your inheritance, or somebody's estate or their probate. Speaking to a specialist about your options within weeks of the death will usually prove to be a prudent step.

Contact



Daniel Edwards

Partner

daniel.edwards@brownejacobson.com

+44 (0)330 045 2533

Related expertise

Services

Estates and rural services

Private client services

Will, trust and inheritance disputes

