DISPUTE RESOLUTION

CONTESTING A WILL

CAN A WILL BE CONTESTED?

Dealing with the death of a family member is never going to be easy, and when it comes to the will, we all want our loved ones' assets to be distributed faithfully and fairly. But if you have concerns about the way in which the will was produced, you may have legitimate grounds for contesting a will. In this guide our aim is to hopefully give you some clarity on what contesting a will in England & Wales involves, and whether it's a good idea.

CAN I CONTEST A WILL?

The short answer is yes, you can legally contest a will, though whether or not you succeed is by no means guaranteed. It is worth bearing in mind that the process of contesting a will varies throughout the UK; Scots Law has different stipulations regarding wills and succession, so if the person who died lives in Scotland, you will want to get legal advice from Scottish solicitors.

GROUNDS FOR CONTESTING A WILL

In England and Wales, there are various legal grounds for contesting a will. The most common of these are as follows:

Testamentary capacity

This is the legal term used to describe a person's legal and mental ability to make or alter a valid will. If the person making the will (testator) lacks testamentary capacity at the time that the will is executed, the will could be invalid.

Undue influence or coercion

This is where the testator could have been pressured or coerced into changing their will. Coercion is pressure that overwhelms the testator's own wishes without completely changing their mind. Some signs that a will may have been made under undue influence or coercion are that the will is homemade, that no professional advice was sought, and could also be that it appears rushed and includes spelling mistakes, and/or language which would not have been used or understood by the testator.

CONTESTING A WILL

GROUNDS FOR CONTESTING A WILL

Lack of knowledge and approval

This can arise when there has been a mistake made in the will, either because the testator has no knowledge of making a will, is lacking in capacity, or wasn't challenged during the process. For example, the will writer may have made a mistake when preparing the will which was not picked up when the will was signed and witnessed.

HOW MUCH DOES IT COST TO CONTEST A WILL?

There is no definitive answer in terms of how expensive it is to contest a will, because your eventual costs will depend on the nature of the claim, whether any costs can be borne by the estate, and whether the court finds in your favour. Moreover, the final bill will ultimately be determined by the court, so it's by no means obvious how much you may pay to contest a will.

In terms of who pays to defend a contested will, the party challenging the will incur the costs, at least initially, but the losing party may be ordered to pay the winning party's costs. There have been some High Court cases where the litigation costs have come out of the estate, but this is not guaranteed, so again, the cost of contesting a will depends very much on the merits of an inheritance claim.

WHO CAN CONTEST A WILL?

Theoretically, anyone can challenge a will, whether that's a sibling, or someone who doesn't appear to benefit on first glance, but may be a residuary beneficiary. However, contesting a will is not something you should consider without very good reason.

If you want to challenge a will for failing to make a reasonable financial provision, you'll need to be a financial dependent and normally one of the following: a child, spouse, civil partner, an ex-spouse or ex-civil partner who is yet to remarry, or a cohabiting partner.

However, if a court decides that a will is invalid, remember that the estate is distributed at the discretion of the court, meaning there is no guarantee you will receive anything. The court normally distributes the estate in line with the most recent valid version of the will, so it's likely you will only receive something if you were named in that version. It's also worth bearing in mind that if there are no surviving family, the estate will go to the Crown although this is rare.

CONTESTING A WILL

WHEN CAN A WILL BE CONTESTED?

It's better to contest a will as early as possible in the process. Contesting a will after probate has been granted is technically possible, but can be costly and requires additional legal advice as there are strict timescales to be considered.

CAN A WILL BE OVERTURNED AFTER PROBATE?

Yes, if you ultimately succeed in proving that the will is invalid, then a will can be overturned after probate. But contesting a will at this stage is complicated, and you risk incurring expensive legal costs if the court finds in favour of the executors. Furthermore, the longer the process is delayed, the greater the chances that the deceased's assets will already have been distributed.

CAN YOU CONTEST A WILL AFTER THE ESTATE HAS BEEN DISTRIBUTED?

You can technically contest a will after the estate has been distributed, but this may be very difficult to achieve. You want to challenge the will before the grant of probate has been issued. Legally, you could attempt to recover the assets from the beneficiaries, but this will be harder if the money has been spent, especially if the beneficiaries no longer have the funds to settle any court fees.

HOW TO CONTEST A WILL

If you wish to contest a will, you would ideally enter a 'caveat' with the Probate Registry, which gives you 6 months to determine whether you have reasonable grounds to challenge the will, and can be extended. Bear in mind that the executors have the right to lodge a 'warning' to the Probate Registry; at this point, you may wish to substantiate your caveat through what's known as an 'appearance', but doing so means the matter would have to be resolved by an Order of the Court, with the potential for expensive legal costs.

CAN ANYONE VIEW A WILL?

Only the named executors can view a will before the grant of probate has been issued. After this stage, the will becomes a public document and anyone can view the will if they apply to the Probate Registry.

CONTESTING A WILL

HOW CAN I GET A COPY OF A WILL BEFORE PROBATE?

If you're not a named executor in the will, then you have no right to view it before probate has been granted. However, there may be avenues you can explore:

- Write to the executors of the will – If you have a legitimate claim to view the will, perhaps as a residuary beneficiary, you could send a written request to the executors.
- Apply through the courts – A solicitor could advise you on who is entitled to view the will after the death, or if you have grounds for contesting a will through the courts. Remember that the legal costs for an unsuccessful claim will be high.
- Lodge a 'caveat' with the Probate Registry – As we've covered, entering a caveat with the Probate Registry before a grant of probate has been issued is one way to challenge a will. If the executors choose not to escalate the dispute with a 'warning', they might let you get a copy of the will before probate.

If you are a residuary beneficiary you are entitled to view a copy of the estate accounts, which record all the financial transactions of the estate.

At Stephen Rimmer, our dedicated and sympathetic team of contentious probate solicitors can provide expert advice about all types of dispute that arise after the death of a loved one so you can be assured that we will always have your best interests in mind.

Follow this link for a free initial 30-minute consultation or call us on 01323 434416 to see how we can help you.