

Wills, Trusts and Probate Briefings

Disputing a will

Grounds for a dispute

Dealing with the loss of a friend or relative can be a difficult time, made worse if family disputes re-emerge or if you seem to have been treated unfairly.

Normally, the deceased's estate should be distributed among the different beneficiaries according to the terms of the will. You cannot generally dispute the will simply because you feel that you should have got more, or that you had been promised a particular item - unless you have a clear legal right to it (such as a contract).

There are, however, a range of grounds on which you can challenge a will and how it is dealt with (see below for more details):

- The will is invalid for some reason
- Another beneficiary is not entitled to receive anything
- You were financially dependent on the deceased
- Assets or debts have been wrongly dealt with
- The executors are acting improperly in the way they administer and distribute the estate

If you feel that you may have a case, you should take legal advice. You may be able to take immediate steps to help prevent assets being wrongly passed to other people. For example, "entering a caveat" at the Probate Registry can help delay the grant of probate (which allows the executors to take control of the estate). The most appropriate legal action will depend on your particular circumstances.

Often, the best approach will be to discuss your concerns with the executors and/or beneficiaries, and try to negotiate an agreed solution: for example, the beneficiaries might agree to change the terms of the will in your favour using a deed of variation. If you cannot reach an agreement, going to court remains an option - your lawyer will be able to advise you on the strength of your case and the likely costs involved.

Invalid will

A will is not valid unless it is signed by the person making the will (the 'testator'), with the signature properly witnessed by at least two witnesses.

In addition, a will is not valid if the testator was either acting under undue influence or lacked "testamentary capacity" when they made the will - broadly speaking, if they did not understand what they were doing. For example, it might be possible to dispute a will made by someone who was suffering from dementia.

A valid will can subsequently become invalid if the testator:

- makes a later will
- gets married or enters into a registered civil partnership (unless the will was clearly made with that marriage in mind)
- deliberately destroys the will with the intention that it should no longer apply

Similar considerations apply to any "codicils" - documents setting out changes to one or more of the terms of the original will.

If a will can be shown to be invalid, then the situation is treated as if the testator died intestate - ie without having made a will. This means that the estate will be distributed according to the rules of intestacy - normally shared between any surviving spouse and children, or if there are none between the other closest relatives.

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If a codicil is invalid, then the original will remains in effect without the changes made by the invalid codicil.

Beneficiaries

Normally the beneficiaries named in a will are entitled to the bequests made to them. There are a few special cases:

- If a beneficiary is one of the witnesses to the will, that beneficiary receives nothing. (The rest of the will remains valid).
- The testator's spouse (or registered civil partner) normally ceases to be a beneficiary if they subsequently divorce - unless the will states otherwise. However, the former spouse may still be able to claim dependency. If the couple separated without being divorced the spouse remains a beneficiary.
- If a beneficiary dies before the testator, then any bequest to that beneficiary normally ceases to apply - unless the will states otherwise (eg passing that share to the deceased beneficiary's children).
- If the will states that a beneficiary should receive a particular asset which is no longer part of the estate (eg if it was sold before the testator's death), then the beneficiary is not normally entitled to any substitute.

Dependency

You may be able to dispute a will on the basis if you were financially dependent on the testator. Challenges can be made by:

- The testator's spouse
- Anyone who lived with the testator, as husband and wife, for at least two years
- A former spouse who has not remarried (and who did not have a "clean break" financial settlement as part of the divorce)
- A child or anyone else who was treated as a child of the family
- Anyone else who was being financially maintained by the testator

You might claim if you were either left out of the will altogether or were not given a "fair" share of the estate. How much is fair depends on the particular circumstances, taking into account factors such as your financial need and resources, whether you have a disability, how much is available and what other claims there are on the estate.

Administration of the estate

You may want to challenge the way the estate is being administered and distributed: for example, if you feel that the executors are not giving you what you are entitled to under the terms of the will.

In some cases, there may be good reasons for what is being done. For example:

- It may take the executors months (or even years) to sort out all the assets and debts and to get probate so that they can distribute everything
- Debts, including funeral expenses and any inheritance tax, take priority and may have to be paid off before the beneficiaries receive anything
- There may be good reason for the executors to delay selling assets (eg if their value is expected to rise substantially) before distributing money to the beneficiaries; the will may give the executors the explicit right to manage the estate as they see fit.
- Some assets fall outside the estate anyway and are not covered by the will - for example, certain kinds of jointly owned property, occupational pension schemes and life insurance policies written in trust.

If the executors appear to be acting improperly, you should take immediate advice.