

GROUNDS FOR CHALLENGING A WILL

In order to successfully challenge a will, you must prove one of the following:-

- The will was not correctly executed
- The deceased lacked capacity
- The deceased lacked knowledge and approval
- The deceased was unduly influenced
- Fraud has taken place

Invalid Execution

To be valid a will must be signed by the deceased (or on their behalf in their presence) in front of two witnesses, who must then sign in front of the deceased. It is preferable that all of the parties are present in the same room, at the same time, in order to establish that the two witnesses were present when the deceased signed his will.

Lack of Capacity

For a will to be valid the person making the will must understand they are making a will and as a result what will happen to their assets on their death. They must know the extent of their estate they are giving away and understand who they are obligated to, or who is deserving of their bequest. They must not be suffering from a disorder of the mind which would poison their decisions, or cause them to make a will which if they had been of sound mind they would never have made.

Lack of Knowledge and Approval

The person must know they are making a will and must approve its contents. In suspicious circumstances it may be presumed that they didn't understand what was going on. Suspicious circumstances may include any or a combination of the following:-

- Where a major beneficiary organises and drafts the will
- Where a major beneficiary is present when the instructions for the will are given or when the will is signed and witnessed
- Where the will is substantially changed shortly before death
- Where the will is complicated
- Where the will is home made and not prepared by a firm of solicitors

Undue Influence

Where a person is physically or mentally coerced into making a will which they would otherwise not have made of their own free will. Mere persuasion is not enough and the burden of proof is upon the person alleging that undue influence has taken place. This ground is very hard to prove because the coercion is often subtle or covert and there is usually a lack of independent evidence.

Fraud

Where the signature of the deceased has been forged and is not his own. Or where the document that is being signed is not the document that the deceased believes he is signing. I.e. the deceased signs his will, believing he is signing something else.

Time Limit

Please note, that there is a time limit within which to bring such claims. Where the deceased died having made will, the time limit is 12 years from the date of death. Where the deceased has died without having made a will, the time limit is 12 years from the date of the grant of probate.

Contact Us

If you or someone else, is concerned that any of the above grounds may apply, in relation to a loved one's will, please contact Tollers contentious probate team for advice.