

Can you challenge a will?

Monday 11 June, 2018

Making a will is one of the best things you can do to provide for your family after you have died, but sometimes the contents of a loved one's will can come as a surprise and, possibly, disappointment. In some cases there is nothing you can do about this, but where you suspect there is something wrong with a will or that it fails to make adequate provision for you when you had a reasonable expectation that it would, it may be possible for the will to be challenged. Mustafa Sidki, contentious probate expert at Warners Solicitors in Kent explains more.

Grounds for challenging the validity of a will

Because we live in a country which believes that people should be free to leave their property and money to whoever they want to when they die, it can be very difficult to challenge a will.

First, you need to have a sufficient interest in the will. Broadly speaking, this means that you must either be the spouse, civil partner, child, or other blood relation of the deceased who is legally entitled (in theory at least) to inherit from them. Alternatively, you need to be someone named as a beneficiary in another will made by the deceased, someone to whom the deceased promised to leave an inheritance or someone to whom the deceased owed money.

Next, you need to show that one of a very limited list of grounds for challenge exist. From the point of view of a relative or close friend who believes the circumstances surrounding the creation of a will are suspicious, these grounds include where:

- the will is not written very clearly and so is difficult to read or understand;
- the will has not been signed or there is doubt that their signature was witnessed properly;
- there is evidence to suggest that the deceased lacked mental capacity at the time the will was prepared, for example following the onset of dementia;
- the terms of the will do not mirror what you know your loved one wanted;
- there is concern that the deceased may have been coerced or pressurised into making the will;
- or
- there is evidence to suggest that the will has been forged.

Where grounds for bringing a challenge exist, it is important that you seek legal advice as soon as possible so that a restriction can be lodged with the probate registry to stop your loved one's property and money being distributed in accordance with the terms of the will while your concerns about its validity are investigated.

Assuming your challenge is successful, a court may decide to either treat the will as though it was never made – in which case your loved one's estate will be distributed according to the rules of intestacy – or to substitute it with an earlier or later will where one exists.

Grounds for challenging the terms of the will

It might be possible for you challenge to the terms of the will if you can show that you were financially dependent on the deceased and that the terms of their will fails to make adequate financial provision for you when you believe such provision ought to have been made.

This type of challenge must be brought under the Inheritance (Provision for Family and Dependents) Act 1975 and if successful will result in the terms of your loved one's will be varied so that adequate financial provision for you is provided.

To make a claim for financial your provision, you must be:

- the current spouse or civil partner of the deceased;
- the former spouse or civil partner of the deceased, provided you have not remarried or entered a new civil partnership;
- someone who lived with the deceased as though you were married or in a civil partnership for at least two years before they died;
- the biological children of the deceased or someone they treated as their child; or
- someone who was financially maintained by the deceased prior to their death.

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Depending on how much money your loved one left, surviving spouses and civil partners can be awarded whatever sum is reasonable in the circumstances. Anyone else making a claim will only be entitled to an award which meets their daily living costs, and of course the estate of your loved one cannot be forced to pay money if there is nothing available.

If you think you may have grounds to challenge the validity of your loved one's will, or believe a claim for financial provision may be possible, please contact Mustafa Sidki, a solicitor in our dispute resolution team, on 01732 770660 or email m.sidki@warners.law to find out how we can help.

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