

“I Want to Dispute A Will - What Do I Do?”

When someone close to you dies, it is a very distressing time, so the last thing you needs is money problems as well. If you expected to be provided for in the Will and have planned your own financial security accordingly, it comes as a dreadful shock to find that the Will fails to meet your expectations.

There could be a number of reasons why the Will has failed;

Perhaps your loved one, for various reasons, has simply not provided for you as they should have done or as you had expected.

Perhaps the Will is a homemade one and has not been properly completed and executed. It would therefore fail for technical reasons, throwing the family back onto the Intestacy Rules, which often are not suitable for the needs of the dependants. Those Rules include provisions such as:

- The first £250,000 of the Estate goes outright to a spouse with children or £450,000 to a spouse with no children
- The spouse gets the personal chattels of the deceased
- The spouse has a life interest in 50% of the balance of the Estate and the other 50% is shared between the children, if there are any.

There are various ways of challenging a Will;

- If the deceased did not have mental capacity to make the Will,
- If there was undue influence or duress by those benefiting from it
- If it was not completed and executed in the technically correct manner

If you were financially dependant upon the deceased before death, you could make out a case for financial dependency and make a claim under the Inheritance (Provision for Family and Dependants) Act 1975. (This is typically usually used by the spouse/partner/child of the deceased; however, it can apply to anyone who can make out a case to the court that they were financially dependent upon the deceased at the date of death.)

There are steps you can take to investigate and resolve the matter;

The initial investigation of such a case should be managed along the lines of the ACTAPS (Association of Contentious Trust and Probate Specialists) Pre-Action Protocol. The Protocol governs the early steps in a case including contacting the deceased's GP and any previous Solicitors, for example, concerning their file relating to the deceased's Will. The ACTAPS website can be found at www.actaps.com

Public Funding is sometimes available for such claims, however, very few Solicitors operate this scheme nowadays. If you believe you may qualify for Public Funding, you can check out the website of the Legal Services Commission at www.legalservices.gov.uk and you would need to speak to the Solicitor individually - there are financial and merits tests.

Claims often take a long time and are very expensive in terms of legal costs. They are also very stressful in terms of emotions and the breakdown in family relationships. It is important to gather supporting evidence as quickly as possible and there are also quite tight time limits for a claim under the Inheritance Act – 6 months from the date of Grant of Probate.

If you require advice regarding your particular circumstances, please telephone us to speak to one of our specialists in this field.

Or REQUEST A CALL BACK at a time convenient to you.

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