

# When and who can challenge a Will?

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It is already difficult time having lost a loved one, and if you suspect that their Will may not reflect their wishes it can make an emotional time even more uncertain. There are a number of ways in which a Will may be challenged in England and Wales. If you have been left out of a Will, haven't been left as much as you had expected, or think the Will is wrong in some way then you may be able to contest it.

There are certain grounds for contesting a Will. These include that the Will is invalid or that you have not been properly provided for in the Will and were financially dependent on the deceased (claims under the Inheritance (Provision for Family & Dependents) Act 1975).

## Contesting an Invalid Will

A Will may be considered invalid if:

1. The deceased lacked mental capacity when making the Will (which is also known as 'testamentary capacity'). This means that the deceased must:
  - a. Understand that they are making a Will and the effect of that Will.
  - b. Know the nature and value of their estate.
  - c. Understand the consequences of including and excluding certain people under their Will.
  - d. Not be suffering from any 'disorder of mind' which may influence their views.
2. The deceased did not have 'knowledge and approval'. This means that the deceased must also know what they are signing is a Will and they must approve its contents.
3. The Will was not correctly signed or witnessed.
4. The Will has been forged.
5. The deceased was unduly influenced, coerced or under duress when making the Will (also known as Undue Influence).

If a Will is found to be invalid, then the deceased's estate would be distributed according to their previous valid Will, or if there wasn't a previous Will, through the rules of intestacy. Therefore, it is important to consider whether a successful claim would produce a better result than the existing Will.

## The Inheritance Act

The Inheritance (Provision for Family & Dependents) Act 1975 is to protect individuals who are financially dependent upon another person when they die. The deceased may dispose of their assets under their Will in any way they may choose. However, the law provides that certain individuals are entitled to bring a claim against the estate if they feel that reasonable financial provision has not been made for them under the Will. The most common categories of person who can bring a claim against the estate are:

- Children.
- Spouses or civil partners.

- Former spouses or civil partners who have not remarried.
- A person who has continually lived with the deceased for at least two years before their death.
- Any person financially maintained in some way by the deceased.

### **When to contest a Will?**

The time limits for making certain types of claims can be short, so acting quickly and seeking legal advice will help ensure that you don't lose your right to claim.

The exact time limits will depend upon the type of claim that you are making. In respect of a 1975 Act claim need to start your claim within six months of probate being granted. If more than six months have passed, you might need to apply to the court for permission to make a claim.

If you wish to challenge the validity of a Will, there is no time limit to making a claim. However, the estate could be administered if a challenge is delayed which may affect the claim.

All parties are now required to consider mediation and/ or a similar type of alternative dispute resolution which can be particularly appropriate and helpful in these circumstances to reach an amicable settlement before going to court. However, should the matter proceed to court, we can provide experienced support each step of the way.

If you wish to discuss in further detail the ground for challenging a Will, please contact our Dispute Resolution Team on 01384 371622.

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