

Challenging A Will

Introduction

This fact sheet is about challenges which can be made to a Will after a person's death. To learn about making a Will or for information about what the consequences are of dying without making a Will visit our [Your Will](#) section.

This is a general guide only – To challenge a Will can be expensive. Strict time limits apply. You should always seek advice from a solicitor about the specifics of your case.

When someone dies and the contents of their Will are revealed, friends and relatives may be surprised, or even distressed by it's contents. The laws of England and Wales are quite liberal. We are given a great deal of choice about who we leave our property to, even if our choices seem unfair or unwise to others. Wills can only be challenged if the Will is invalid or, in limited circumstances, when certain people have not been provided for in the Will.

Is the Will invalid?

Is the Will invalid because the proper procedure has not been observed?

If a Will does not comply to strict rules, it may be invalid. A valid Will can only be made by someone of at least 18 years of age. Wills have to be in writing and signed by the person making the Will in the presence of two witnesses who are not going to inherit anything from the Will. The witnesses should also not be married to anyone who will inherit anything from the Will.

A properly drafted Will makes it clear that the two witnesses actually saw the person making the will sign the Will. This clause is called an attestation clause. A Will may still be valid without such a clause. If you want to challenge a Will without such a clause, you would need to seek specialist advice from a solicitor.

Is the Will invalid due to the personal circumstances of the person making the Will?

The person making the Will should not be under pressure or duress from any other person to write their Will in a particular way. They should also be of sound mind at the time of making the Will. They should understand what they are doing at the consequences. Disinheriting your family is not

evidence of mental health problems. The law allows us to be eccentric. Each case depends on its facts and individual advice must always be sought. Here are a links to reports about two cases in which families challenged Wills, with very different outcomes.

<http://www.guardian.co.uk/politics/2007/oct/16/uk.conservatives>
<http://www.timesonline.co.uk/tol/news/uk/article3017913.ece>

Are you adequately provided for in the Will?

In very limited circumstances, it is possible to challenge a Will if you have not been provided for. People who could make such a challenge include, current or former spouses, current or former civil partners, (provided they have not remarried or entered into a new civil partnership). Cohabitees who have lived with the deceased for two years immediately prior to the death may also claim.

Children, stepchildren or anyone treated as a "child of the family" by the deceased also have a claim provided they were still dependants at the time of the deceased's death. Adult children may have more difficulty, unless they can show ongoing dependency.

Anyone else who was financially dependant on the deceased could theoretically have a claim. There is a strict time limit of six months from a grant of probate or letters of administration within which a challenge should be made. All such challenges are legally complex and specialist advice should be sought.

People who have an interest in property owned by the person who died

If you owned a property jointly with the person who died or if you have made a substantial contribution to the cost of any property that was in the sole name of the deceased at the time of their death, you should seek legal advice from a solicitor. It may be that you have a claim which is independent of anything in the Will.

Other sources of help and information:-

Fact sheets on Wills and probate produced by Her Majesty's Court Service
<http://www.hmcourts-service.gov.uk/HMCSCourtFinder/FormFinder.do>

Help coping and support coping with bereavement:
www.crusebereavementcare.org.uk

THIS FACT SHEET IS INTENDED AS A GENERAL STATEMENT OF THE PROCEDURE AND DOES NOT PURPORT TO RENDER SPECIFIC ADVICE,

LEGAL OR OTHERWISE. SPECIFIC ADVICE ON A PARTICULAR PROBLEM SHOULD ALWAYS BE SOUGHT.

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