

YOUR QUESTIONS ANSWERED

Here we set out some common questions and answers to help you understand the legal issues in disputed estates

How can a Will be challenged?

Execution

If the Will was not executed properly, in accordance with the law, the Will can be cancelled. The Will must be properly signed by the testator and witnessed by two witnesses who are not beneficiaries of the Will

Capacity

Anybody making a Will must be capable of making their Will. If they were not then the Will can be set aside or cancelled, meaning it will have no effect and that person's estate will then pass either under an earlier Will or, if no earlier Will exists, on intestacy. If a testator suffered dementia, Alzheimer's disease or another illness which afflicted capacity or was being prescribed drugs which may have affected their capacity at the time the Will was made then there may be reason to suspect that they may not have had sufficient mental capacity to make a valid Will.

Knowledge & Approval

A person making a Will should also 'know and approve it'. In other words, did the person making the Will intend to make the Will as set out? Questions of knowledge and approval often arise when testators are confused as a result of a disability, where there may be some other defect with the Will or the circumstances in which the Will was made arouses suspicion. Again, if there was a lack of knowledge and approval the Will can be cancelled and an earlier Will or intestacy will prevail.

Undue Influence/Fraud

Making a Will requires freedom to dispose of the estate as wished. The person making the Will 'may be led but not driven' and so persuasion, such as appeals to affection or gratitude for past services, does not amount to undue influence. However, if the Will was obtained because of coercion or fraud, then this would make the Will invalid and so it would be cancelled.

The above actions, if proved, would invalidate the Will. Such claims are particularly important if the effect of invalidating the Will is that you would receive a greater share of the estate under the earlier Will or intestacy. See our article '**Undue Influence**'.

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Can I make a claim for more money from the deceased's estate?

You may be able to claim a greater share of the estate without invalidating the Will, if you have not received adequate provision from the estate. You must be a certain category of applicant to make a claim and hence be either:

- A spouse or civil partner of the deceased
- A former spouse or former civil partner of the deceased who has not remarried or formed a civil partnership
- A co-habitee of the deceased (including same-sex co-habitees)
- A child of the deceased
- Somebody treated as a child of the deceased immediately before the deceased's death (usually a step-child)
- A dependent of the deceased immediately before the deceased's death

If you fall into any of the above categories you may have a claim under the Inheritance (Provision for Family & Dependents) Act 1975 to more provision from the estate. You need to show that what has been left to you by the deceased is not 'reasonable financial provision'. For a spouse or civil partner claims awards can be more generous, but the key test is whether your needs exceed what you receive from the estate. For other possible claimants the court awards will be determined by the value of their dependency on the deceased. See our article '**Inheritance Act Claims**'.

There was a property transfer and money paid out before the death which looks suspicious – is this wrong?

Most payments or transfers before a death are perfectly okay, but sometimes they may be cancelled. This would mean that the person who has received the property or the money has to give it back to the deceased's estate.

Some transactions can be cancelled and paid back if the deceased person made the transaction when they lacked capacity or if they were being influenced at the time by somebody who was trusted and relied upon by the deceased unless there is a good explanation for the transfer. See our article '**Undue Influence**'.

I was promised some property by the deceased but it has not been left to me by the Will – can I do anything?

Yes. In some circumstances the law will step in to ensure that the person cannot break the promise they made and you can ask the court to enforce that promise. A lot will depend upon the exact nature of the relationship you had with the person who made the promise.

For more information and help, please contact **Paula James** on 01903 222 108 or email paula.james@thomaseggar.com or by calling **Lloyd Junor** on 01903 222 103 or email lloydjunor@thomaseggar.com

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