

Will disputes and Inheritance Claims

Q&A

1. I am not happy with the will of a friend or relative who has died, how can I challenge it?

Answer:- There are various grounds for challenging a will – you could argue that the person who made the will lacked mental capacity at the time, that undue pressure was placed on them to change their will or that they did not understand or approve the contents of their will. In addition it is possible that the will may not have been validly drafted or executed or that it was subject to fraud.

If you have been left out of a will or have received less than you were expecting you may be able to make a claim under the Inheritance (Provision for Family and Dependents) Act 1975 or using the doctrine of proprietary estoppel.

2. What evidence would I need to support my challenge against a will?

Answer:- If the will was prepared by a firm of solicitors it will be extremely important to obtain their file or a copy of it, in order to discover the background to the making of the will. If you are alleging that the person who made the will lacked mental capacity then medical evidence will need to be gathered from the deceased's GP and also possibly from an independent expert. Witness evidence from those in contact with the deceased at the time the last will was signed will also be important.

3. If I am successful in challenging a will, what is the effect?

Answer:- If a will is successfully challenged on the grounds of lack of capacity, undue influence or lack of knowledge and approval then it is deemed to be invalid and a person's Estate is administered in accordance with their previous will (assuming that will is not also set aside). If that leaves no valid will in place, the intestacy rules apply.

4. What is the Inheritance (Provision for Family and Dependents) Act 1975?

Answer:- The Act allows spouses, children, civil partners, cohabitants and dependants to make a claim against a deceased person's estate in circumstances where they believe they have not received reasonable financial provision from that estate. This could be because they have been left out of a will or there is no valid will and the intestacy rules do not provide for them.

A claim under the Act will be assessed by the Court using a number of factors before a determination is made as to what provision a person should receive from the estate.

5. What is proprietary estoppel?

Answer:- If a person promises you that you will receive something from their estate following their death (their house for example), you rely on that promise and do so to your disadvantage, you may have a claim against the person's estate under estoppel if on their death you do not receive what was promised to you. This is known as proprietary estoppel. The Court will assess such a claim and will award what it thinks fair in all the circumstances.

6. I believe I have lost out as a result of the way in which a will was drafted/ the estate was administered. What can I do?

Answer:- You may have a claim in negligence against the solicitors who prepared the will or handled the administration for the recovery of the loss you have suffered. If you think you may have a claim it is important to take advice on your case as soon as you can.

7. I believe that a Power of Attorney may have been used inappropriately, what can I do about it?

Answer:- You should seek legal advice on the options open to you, which could include involving the Court of Protection in reviewing the action of the Attorney.

8. I am not happy with the way in which the Executors are handling the administration of an estate, what can I do about it?

Answer:- Executors have duties which they are obliged to comply with when dealing with an estate. You should seek legal advice on the Executors' conduct. For example if the situation is particularly bad it may be necessary to apply to the Court for directions or for the removal of one or all of the Executors.

9. What are the intestacy rules?

Answer:- If someone dies without leaving a valid will they are described as dying "intestate". The Intestacy Rules, which date back to 1925 will then determine who gets what from the estate.

10. If I challenge a will, what will happen about my legal costs?

Answer:- The general rule in litigation is that the losing party pays the winning party's costs. However in probate claims the rules are different. Often your costs will be paid out of the estate in dispute, before it is distributed. However there is no guarantee of that as the Court has complete discretion on costs and you may be asked to pay your costs out of your own pocket. If Court proceedings have not been issued you may be able to negotiate a settlement whereby your costs are paid out of the estate.

11. What is mediation?

Answer:- Mediation is a form of Alternative Dispute Resolution (ADR), which is increasingly used in will disputes and inheritance claims in order to reach an out of court settlement. It can often be a cost effective way of agreeing a settlement and it is a confidential process. An independent mediator attends the mediation with the parties and their legal representatives and he or she tries to bring the parties together to reach a deal. The costs of mediation are usually split equally between the parties in dispute.

If any of the issues above apply to you we would strongly recommend that you seek legal advice as soon as you can, so that you are aware of the issues in your case and the options open to you.

Please contact Charlie Siegle on 01803 20 20 27 or at charlie.siegle@kitsons-solicitors.co.uk for further information and advice.