



A Practical Guide to Contesting a Will

Will disputes are typically highly sensitive and emotionally charged given the bereavement context in which they arise. Such disputes are also legally complex and can be difficult to navigate without specialist advice.

We hope that the following questions and answers will make the process clearer for you.

Q. Who can contest a Will?

In order to challenge the validity of a Will, you need to demonstrate that you have an interest in the deceased's estate. This is the case where you are either a beneficiary under a previous Will of the Deceased, where there is no previous Will, a beneficiary under the law of intestacy.

Q. What are the grounds for contesting a Will?

The grounds for challenging a Will are limited as testators have freedom to distribute their assets as they wish, provided the Will itself is valid.

The grounds for disputing the validity of a Will are:

- The Will was not correctly signed and witnessed
- The signature on the Will is not the Deceased's signature
- The Deceased lacked the required mental capacity to make a Will at the relevant time
- The Deceased did not know and approve of the contents of the Will
- The Deceased was subject to the undue influence of another person

Q. Are there time limits in place that can affect my disputing a Will?

There is no time limit for challenging the validity of a Will. However, it is in your best interests to make a claim at the earliest opportunity.

Q. Do I require legal representation to contest a Will?

It is possible to represent yourself in a Will dispute. However, it is recommended that you seek legal advice before contesting a Will as it is not a straightforward process. Having a specialist solicitor advising and representing you will greatly increase your likelihood of gathering the information and evidence required in order to proceed with such a claim. It would be unwise and potentially very costly to bring a claim yourself without having taken advice on the grounds and procedures to be followed.

Q. How long will the dispute last?

The length of Will disputes varies greatly depending upon a number of factors, such as the complexity of the case and the stance of the other party. Some matters can be settled in a matter of months while others can last several years.

Q. Will I have to go to court to contest a Will?

The majority of Will disputes can be resolved without court intervention and are settled by negotiation or mediation between the parties. However, if agreement cannot be reached it will be necessary to go court for a judge to decide the dispute.

Q. How much will the dispute cost?

The cost of disputing a Will varies from case to case depending upon the complexity of the case and the stance of the other party. It is therefore difficult to say at the outset what the overall costs will be. If the intervention of the court is required, the costs will be much higher than if a settlement can be agreed quickly.

Q. How will my claim be funded?

We act for clients on a private fee-paying basis. Legal aid is not available for this type of work.

It is not correct to assume that your costs will be paid out of the Deceased's estate, you may have to bear your own costs. Recover ability of your legal costs depends upon what is ultimately agreed between the parties or decided by the court.

If court proceedings are issued, the payment of costs is at the discretion of the Court. However, the starting point is that the losing party bears the costs of the winning party as well as their own.

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