



# Wills, inheritance, estate & trust disputes



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Disputes about wills, inheritance and estate related matters can have a huge impact on those involved, because they more often than not arise between family members following the death of a loved one.

These sorts of disputes are on the increase at an alarming rate. For example, court statistics record that 88 claims for financial provision from an estate were brought in the courts during 2013, compared to 158 in 2016.

The law and the legal procedures which govern these types of dispute are distinct, and differ from those governing more general litigation.

The best advice to most people involved in a dispute about a will, inheritance and/or an estate is to try and work towards a resolution sooner rather than later, and to do so as cost-efficiently as possible, whilst at the same time manoeuvring themselves into the strongest negotiating position. It may therefore be worth instructing a specialist contested trusts & probate litigator to help achieve that.

### Common types of will, inheritance & estate dispute

#### 1. The will (or intestacy) does not make reasonable financial provision for someone.

The Inheritance (Provision for Family & Dependents) Act 1975 lists certain categories of person who are eligible to bring a claim under this legislation where an estate does not provide well enough for that person.

Clients should seek advice as soon as possible if they wish to bring a claim, because claims ought to be brought within six months of the grant of probate - a tight time deadline.

#### 2. The will is invalid

A will can be invalid for a number of different reasons. Cases do however turn on their facts. For example, the courts have declared that a will made by a grieving widower was invalid because he was so overcome with grief when he made it.

The gathering of information and relevant documents is usually the first step to take when considering mounting a will challenge. It may also be necessary to take steps to prevent the grant of probate being issued to the executors named in the questionable will, or prevent distribution of the estate.

#### 3. Where it is alleged that the Deceased promised someone an estate asset during their lifetime, but did not follow through on that promise.

Where a promise has been made to someone by the Deceased, and that someone reasonably relied on the promise to their detriment, they may be able to enforce the promise as if it were almost a contractual obligation as against the Deceased's estate.

The law in this area is complex, and as with many cases in the realm of inheritance and estate disputes, is very much fact specific. The important point to recognise is that there may be a good claim against the estate based on the law of 'proprietary estoppel' so advice should be sought early on.

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### 4. The will draftsman was negligent.

Unfortunately, it is a fact of life that people make mistakes and those who draft wills are not immune. Where there has been a mistake, there may be a claim against the will draftsman, or a route to the court so that the mistake can be rectified.

### 5. Claims against Executors or Administrators.

Executors of wills and Administrators of estates all have certain duties, and disputes can sometimes arise with beneficiaries, or even develop as between Executors and Administrators where there is more than one.

The consequences of this sort of dispute can be damaging because it gets in the way of the estate administration. If the dispute cannot be resolved, serious thought should be given to forcibly removing (by court order) or replacing (by proper process) the Executor or Administrator. This is not always straightforward, because an Executor who has 'intermeddled' in an estate cannot simply resign and walk away from it.

Our Contested Trusts & Probate Team have the expertise to advise clients about a broad range of will, inheritance and estate disputes, including the following:

- Claims for reasonable financial provision from an estate under the Inheritance (Provision for Family & Dependents) Act 1975.
- Claims that a will (or trust deed) is invalid.
- Claims to enforce a Deceased persons 'promise' to leave their estate to a

particular person (e.g proprietary estoppel or the doctrine of mutual wills)

- Disputes between Executors, Trustees, Administrators and beneficiaries.
- Disputes about the value of estates (eg where the value has been reduced by a questionable lifetime 'gift' or other transaction)
- Obtaining the production of a will and/or a will file.
- Blocking grants of probate.
- Negligence claims against will draftsmen.
- Rectifying a will where there is an error.
- Obtaining the courts guidance on the meaning of a will or trust document, where the meaning is unclear or the subject of dispute.

For more information please contact Deborah Cain at [deborahcain@brachers.co.uk](mailto:deborahcain@brachers.co.uk) or on 01622 655297. Deborah is a Partner in Brachers Contested Trusts & Probate Team. She is a longstanding member of the Association of Contentious Trust & Probate Specialists (ACTAPS) and is a Legal 500 Recommended Lawyer in the field of Contested Trust & Probate.

The information contained in this document provides background information only. The document may be misleading if relied upon as an exhaustive list of the legal issues involved. If any matter referred to in this document is sought to be relied upon, further information should be sought.