Gaby Hardwicke SOLICITORS

# Briefing Note: Inheritance Disputes

## An Introduction to the Guide

There are many emotional and practical steps to process when a loved one passes away. Sometimes added this is an uncertainty about how their belongings should be divided or who should be responsible for overseeing their affairs, often amid family tensions, upset and disappointment.

The common examples include:

- Inadequate provision to meet needs
- Executor wrongdoing or mismanagement
- Broken promises
- Will validity

This guide is not intended to cover in full all aspects of the matter and should not be relied upon as legal advice. If you have any queries concerning your personal situation you should contact us for advice on your specific circumstances.

**Briefing Note**
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Summary:
An introduction to some of the legal issues surrounding claims against estates.

**For detailed advice on all Contentious Probate Matters please contact:**

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## Will validity

Under English and Welsh law, the validity of a will is primarily governed by section 9 of the Wills Act 1837. For a will to be valid, it must meet the following formal requirements:

The will must be in writing.

It must be signed by the testator (the person making the will) or by another person in the testator's presence and at their direction.

The testator's signature must appear to indicate their intention to give effect to the will.

The signature must be made or acknowledged by the testator in the presence of two or more witnesses who are present at the same time.

Each witness must either attest and sign the will or acknowledge their signature in the presence of the testator, though not necessarily in the presence of the other witness.

Wills are most commonly challenged on one or more of the following grounds:

- Not complying with the Wills Act requirements set out above;
- Capacity;
- Knowledge and approval;
- Undue influence;
- Fraud or forgery; and/or
- Revocation.

There are often issues of capacity, sometimes alongside the other grounds. The test for capacity is whether, at the time of making the will, the testator:

- Understood the nature and effect of making a will;
- Had some understanding of the extent of their property being disposed of by the will;
- Was aware of the persons for whom they would usually be expected to provide (for instance immediate relatives); and
- Was free from any delusion that would influence their dispositions (such as a medical condition).

The 'golden rule' advises solicitors to involve a medical practitioner to assess the testator's capacity when there is doubt, particularly if they are seriously ill or elderly.

The first stage is often an investigation to find out more about the circumstances around a will. This can include asking questions of a will writer, known as a 'Larke v Nugus request', and enquires with witnesses and other third parties who may have information about the deceased's intentions. It can also include gathering key documents such as medical records. Once relevant information and documents have been gathered we will provide advice as to whether there may be grounds to challenge or defend the validity of a will.

It is important to note that if a will is challenged, the last prior valid will comes into effect or if no valid will, the intestacy rules will apply [link to GH page?]. As part of the investigations, it is therefore necessary to consider what will come into effect if the will is invalid, as a challenge is only worthwhile if it will leave someone in a better position under the prior will or intestacy rules.

A caveat can be used to prevent a grant of representation being made whilst will validity is investigated. It will last 6 months and be extended indefinitely if appropriate. In response, a warning can be sent to the person who lodged the caveat who will then have 14 days to take action. This could include entering an appearance to the warning, which will mean that the caveat remains in force until a probate claim is commenced or a court order directs otherwise.

### Inadequate provision to meet needs

This type of claim is brought under the Inheritance (provision for Family and Dependants) Act 1975 for 'reasonable financial provision'.

The types of people who can bring a claim are limited to:

- A spouse or civil partner;
- A former spouse or civil partner provided that they have not remarried;
- A person who cohabited with the deceased as husband and wife or as civil partners for at least 2 years prior to the death;
- Children of the deceased, including adopted and illegitimate children;
- People who were treated as children of the family (this may include step-children); and/or
- People who were being financially maintained by the deceased.

For all applicants other than spouses or former spouses, it is necessary to evidence that they have an 'unmet maintenance need' generally meaning that their outgoings are more than their income.

The factors the court will consider when deciding the claim are:

- Financial resources and needs of the applicant, other applicants, and beneficiaries, both at present and in the foreseeable future. This includes considering earning capacity, financial obligations, and responsibilities
- Obligations and responsibilities of the deceased towards the applicant or any beneficiary of the estate
- Size and nature of the estate, including whether there are sufficient liquid assets to meet the claim
- Physical or mental disability of the applicant or beneficiaries
- Conduct and other relevant matters: The court may consider the conduct of the applicant or any other person, as well as any other matter it deems relevant in the circumstances

For spouses and former spouses, the court will also consider the age of the applicant, the duration of the marriage or civil partnership, contributions to the welfare of the family, and what the applicant might reasonably have expected to receive if the relationship had ended by divorce or dissolution rather than death.

Claims under the Inheritance Act must be made within 6 months of the date the grant of representation being made, otherwise the court's permission is required to pursue a claim, which will not be given unless there is a good reason for the delay.

## Executor wrongdoing or mismanagement

The duties of an executor primarily involve administering the estate of the deceased in accordance with the law and the provisions of the will or the intestacy rules. These duties include gathering the assets of the estate, paying funeral and testamentary expenses, settling the debts of the deceased, and distributing the remaining estate to the beneficiaries as specified in the will

There might be a number of ways in which you believe the executor is not dealing properly with the estate. The most common complaints are:

- Failing to distribute the estate within a reasonable time;
- Selling estate assets at less than the market value;
- Using estate assets for their own personal benefit;
- Failing to act in accordance with the will; and
- Failing to keep the beneficiaries updated.

If the executor delays dealing with the estate, refuses requests for information or is uncooperative in any way, then there are actions that can be taken including, if appropriate, applying to the court for them to provide information or ultimately for their removal.

## Broken promises

Proprietary estoppel arises where a deceased person made a promise or assurance that led the claimant to believe they would acquire an interest in the deceased's property or estate, and the claimant relied on this promise to their detriment. Many cases involve a family farm where one person has worked on a farm for many years, perhaps sacrificing an alternative career or getting on the property ladder, relying on assurances that they would eventually inherit it. If ultimately they do not benefit under the will as promised, this may give rise to a claim.

# Briefing Note: Inheritance Disputes

Our Contentious Probate team can help to guide you through the potential claims, which are sometimes overlapping – whether actively pursuing or defending on behalf of an estate or beneficiary.

For expert advice on Contentious Probate matters please contact Richard Ostle or Jessie Hansford.

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