



## How to contest a will

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Challenging a will can be complex, and, at an already difficult time, it is a topic around which there is a lot of confusion.

Here we answer some common questions about will disputes.

### **When can a will be contested?**

Normally a person who wants to challenge a will would be somebody who stands to benefit from the deceased's estate if they succeed in their claim. They might, for instance, benefit under a previous will which would then come back into existence. Alternatively, they might benefit under the rules which apply when somebody dies without a will if there was no previous will.

### **When is a will invalid?**

A will could be invalid because it has not been signed in accordance with special rules about how this must be done. Put simply, the person making the will ('testator') must sign it in the presence of two witnesses, who are both present at the same time and who must also then sign the will.

A will might also be invalid if the testator did not have the required mental capacity to make the will, did not have knowledge of the contents of the will, or was pressurised into making the will by somebody else.

### **Who can contest a will?**

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### **Are there any other grounds for contesting a will?**

If a person thinks they should have been left a share of someone's estate they can make a claim if they qualify as an eligible claimant. This includes someone who was a spouse or child of the deceased, lived with the deceased for at least two years prior to his or her death, or was being provided for by the deceased immediately prior to the deceased's death.

In some cases the deceased might have made promises to somebody else prior to their death that they would be left something in the deceased's will and that turns out not to be true. The person to whom the promise was made might be able to claim if they had acted to their detriment because of the promise.

Another situation is where the deceased changed his or her will due to statements made by somebody which turn out to be untrue. The person who loses out as a result of the change made to the will in those circumstances would be able to challenge the will.

### **What happens if I decide to contest a will?**

If the validity of the will is being disputed, solicitors will usually advise that a 'caveat' is lodged at the Probate Registry. This will stop personal representatives obtaining authority (Grant of Probate) to proceed with the administration.

Investigations will then be carried out. Information will usually be obtained from solicitors who prepared the will. Medical records of the deceased will be sought where mental capacity is an issue. Statements from appropriate witnesses will be obtained. When all necessary information has been gathered and exchanged with the opposite party, settlement will be attempted by negotiations. Such negotiations can take the form of a meeting between the parties, or a more formal 'mediation' where an independent qualified mediator will conduct the meeting.

Court proceedings will only be contemplated as a last resort.

### **What do I do if I think I can make a claim?**

Act promptly. It is always best to seek advice from a lawyer who specialises in will disputes because this is a complex area of the law. Also, action might have to be taken swiftly to delay the administration of the deceased's estate whilst the claim is being investigated. All team members at Cripps Pemberton Greenish belong to the Association of Contentious Trust and Probate Specialists ('ACTAPS') the only organisation that recognises experts in this field.

**Call a specialist will dispute lawyer today and find out how we can help or send us your contact details, using the form on the right, and a we will get back to you.**