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L. E. LAW INFORMATION SHEET NO. 12

GUIDE TO CONTENTIOUS PROBATE AND WILL DISPUTES

This document is intended as a brief guide to main grounds on which it may be possible to dispute the validity of a will or part of a will, to make a claim to obtain a share of a deceased person's estate, or to challenge the way in which an estate is being administered. It also briefly outlines the procedure for such disputes. If there is anything you would like us to explain further please do not hesitate to contact us.

Section 1 – Challenging the validity of a will

On what grounds can a will be challenged?

There are a number of grounds on which it may be possible to challenge the validity of a will. The main grounds are:

1. That the testator (the person making the will) did not have sufficient mental capacity at the time the will was made;
2. Undue influence was placed on the testator at the time the will was made;
3. The testator did not approve or have knowledge of the contents of the will;
4. The necessary formalities of the Wills Act 1837 were not observed when the will was made (e.g. because the will was not properly witnessed).

What is the procedure for challenging a will?

It will usually be the case that the provisions of the will are not known until the testator dies. At that stage the executors will begin taking steps towards obtaining probate of the will; anyone wishing to dispute its validity will want to prevent the executor proving the will and commencing the administration of the estate. It is possible to 'block' probate of a will by registering a caveat.

A caveat prevents anyone obtaining probate of the will. Registering a caveat is a simple process and requires payment of a small fee (currently £20). The reason for entering a caveat is to prevent the estate being distributed to the beneficiaries. Once the estate has been distributed it will be far more difficult for a person challenging a will to recover money they are entitled to from the estate. By preventing the estate

being distributed, the subject matter of any claim (i.e. the assets of the deceased) are preserved in the hands of the executor.

Once a caveat has been registered, it is then possible to negotiate with the executor and beneficiaries in order to attempt to resolve any dispute; for example by the beneficiaries agreeing to divide the estate differently than provided for by the will. If the resolution is not possible, the next step would be to begin a claim in court to have the provisions of the will set aside.

Alternatively, the executor of the will can issue a 'warning' to the person who entered the caveat, requiring them to set out why they object to probate being granted. The executor can then begin a claim in court for a declaration that the will is valid and for probate to be granted.

How will the court decide whether a will is valid?

As with other types of litigation, the court will decide the case based on hearing evidence and considering legal arguments. Medical evidence (e.g. on whether the testator had sufficient mental capacity) is often especially important but other types of expert evidence such as handwriting (e.g. where it is disputed whether the testator actually signed the will him or herself) may be required.

People who knew the testator may also need to give evidence about the testator's apparent state of mind, and the relationship between the testator and those claiming an interest in the estate.

What will the court decide?

The court will either decide that the will is valid and therefore grant probate to the executor, or declare that the will is invalid. If the court rules that the will is invalid the outcome is dependent on whether or not the testator had made a previous will. Where there is a previous will, it will replace the will that was found to be invalid. Where there was no previous will, the estate will be divided according to the rules of intestacy.

Section 2 – Claims under the Inheritance Act 1975

Whether the deceased has made a will or dies intestate, the Inheritance (Provision for Family and Dependants) Act 1975 allows certain categories of person to make a claim for 'reasonable financial provision' out of the estate.

The categories of person who may be entitled to make a claim are:

1. Spouses;
2. Former spouses who have not remarried;
3. Co-habitants;
4. Children of the deceased;
5. Any person treated as a child of the deceased;
6. Any other person who was maintained by the deceased.

The right to make a claim arises regardless of whether the deceased's will makes provision for the person making a claim. For example, if the deceased had two children and left 90% of his estate to the elder child and 10% to the younger, the younger child would still be able to make a claim on one of the grounds permitted by the Act.

On what grounds can a claim be made under the Inheritance Act 1975?

A claim under the Act is for 'reasonable financial provision' for the person making the claim. In order to decide what amounts to reasonable financial provision, the court will take account of the following:

1. The financial needs and resources of the person or persons making the claim;
2. The financial needs and resources of the beneficiaries of the estate;
3. Any obligations and responsibilities the deceased had towards any person making a claim or any beneficiaries of the estate;
4. The size and nature of the estate;
5. Any physical or mental disability of any person making a claim or any beneficiary of the estate;
6. Any other matter the court considers relevant, including the conduct of any person making a claim or any other relevant person.

In the case of a spouse or a former spouse who makes a claim, the court will also consider:

1. The age of the person making the claim and the duration of the marriage;
2. The contribution made by the person making the claim to the welfare of the deceased, including looking after the home or family of the deceased.

What is the procedure for making a claim?

A claim under the Inheritance Act 1975 follows a similar process to other litigation (see our guide to litigation). Any claim must usually be started within 6 months of the grant of probate or letters of administration (see our guide to probate for more information on these terms). Permission is required for any claim made outside this time limit.

Section 3 – Disputes over the way an estate is being administered

Even where there is no dispute over who is entitled to benefit from an estate, there may be disagreement about how the estate is managed. Often, the beneficiaries of an estate will become frustrated with an executor's slow progress in dealing with the estate, a failure to keep the beneficiaries updated with the progress, or because the executor and the beneficiaries do not get along. In these circumstances, there is sometimes little formal action that can be taken other than a letter of complaint.

However, in more serious cases, it may be appropriate to apply to the court to remove an executor and substitute a new one. Such circumstances include where:

- The executor is stealing funds from the estate;
- The executor is not keeping proper accounting records;
- The executor has failed to comply with a court order;
- The executor is otherwise wasting or mismanaging estate funds.

Where the executor is also a trustee of part of the estate, or where trustees have been appointed to manage part of the estate for child beneficiaries who will inherit once they reach the age of 18 (or older), the risk of mismanagement will be greater.

Section 4 – other types of dispute

Interest actions

Usually occurring where a deceased dies intestate, there may be a dispute as to who is entitled to take out the Grant of Representation to administer the estate. This may be the case where the person thought to be entitled is the deceased's spouse but the validity of the marriage is doubted by another relative.

Rectification

Where a person has been excluded from a will but believes this to have been the result of either:

(a) A clerical error; or
(b) A failure to understand the testator's wishes;

they may be able to make a claim for rectification of the will. Such an application should normally be made within 6 months of a grant of probate being taken out, although permission can be obtained for a claim outside this time limit.

Section 5 – Costs in contentious probate cases

The court has a wide discretion in all cases as to what orders to make in respect of costs. The usual rule is that the loser pays most if not all of the winner's legal costs.

Probate cases are often treated somewhat differently. It is not uncommon for both sides in a probate dispute to have their costs awarded out of the estate, e.g. where the deceased has changed his will very frequently, and the court takes the view in effect it was the deceased's fault that the proceedings had to be brought to clarify the legal position.

In other cases, e.g. where there is doubt about mental capacity, the court may award costs to the losing party out of the estate, for all steps up until the obtaining of medical evidence, at which point the likely outcome of the action became clearer.

However no guarantees can ever be given about what costs orders the court will make, and generally costs will be dealt with only at the very end of the case.

Disclaimer

This information sheet is for guidance only and does not remove the need to take professional legal advice relevant to the specific facts of any individual case. No responsibility will be accepted for any losses occasioned as a result of any action taken in reliance on the contents of this document.

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