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Myerson **Personal**

Our guide to challenging a Will

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Welcome

Although everything we do is ultimately about you, it is important you get to know the team that will be working with you every step of the way.

Our Contentious Trusts and Probate Team are the leading litigation experts in the North, and we don't say that lightly. If you choose to work with us, you will discover exceptionally talented lawyers who have a passion for making a genuine difference to our clients' lives.

Why Myerson?

Our specialist Contentious Trusts and Probate lawyers provide clear advice on disputes over Wills, trusts, and estates.

As a Top 200 UK Law Firm, we are proud to be ranked as 'Top Tier' in the prestigious international directory **The Legal 500**, and commended by The Times 'Best Law Firms 2023'. This means you can be certain that you will receive the highest quality legal advice.

Your team of solicitors will provide practical advice and, unlike some other firms, are able to draw on a wide range of specialist support and expertise from other solicitors across our firm, from Real Estate to Private Client and beyond.

Find out more about our [Contentious Trusts and Probate Team](#).



A Guide to Challenging a Will

What can I do if I have concerns about a Will?

A Will can only be challenged if there are grounds to do so. The grounds are:

- If the person making the Will did not have capacity to do so and/or did not understand or approve the Will's terms.
- If the person making the Will was unduly influenced (coerced).
- If the Will was made due to duress, fraud or forgery.
- If the Will has not been executed correctly – see further below.

Contesting a Will can be difficult and complex. Evidence is needed to support the ground/s so it is important to gather as much information as soon as possible.

At the outset it is important to know who holds the Deceased's original Will. This is crucial as only the signed original will be accepted by the Probate Registry in all but rare cases. It is also important because the original may need to be examined. Many Wills are stored with solicitors, banks or with other personal and important items but enquiries should be made.

All of the grounds above require evidential proof before the Will can be overturned. However, if the Will has not been properly witnessed or signed (see below) it will be invalid, so this is an important first step to consider if there are concerns about the Will.

An expectation or lack of fairness is not a reason to challenge a Will.



The correct way to sign a Will

A valid Will must:

- be in writing;
- be signed by the person making the Will;
- the signature must be made before two witnesses and they (the witnesses) must be present at the same time;
- or the person making the Will signs it without any witnesses but later acknowledges their signature in front of two witnesses present at the same time; and
- be signed by two witnesses who acknowledge their signatures in the presence of the testator.

A witness does not need to know they are witnessing a Will. A Will can still be valid even if it is not dated.

Who can contest a Will?

Not everyone can bring a claim. A claimant must either be entitled under the Deceased's estate through the intestacy rules or under a previous Will.

A person making a Will has the right of testamentary freedom which means that they can leave their estate to whom they choose. They are not obliged to leave anything to their family so considering a challenge should be discussed with a solicitor.

What happens if a Will is contested?

If you succeed in your claim, the Will is overturned. The estate will then be dealt with according to the Deceased's earlier Will or, if there is no earlier Will, the intestacy rules.

If you fail with your claim, the existing Will is upheld. Legal costs may well be an issue as a losing party may be ordered to pay the legal costs of their opponent.



Practical steps to take if you may have a claim

There are certain immediate steps that can be taken to preserve and gather evidence. These are:

- entering a Caveat at the Probate Registry,
- sending a Larke v Nugus letter to the solicitor who prepared the Will to obtain evidence from their files.
- check titles to any property owned by the deceased in case it has been sold before death or transferred.
- understand and locate original Wills

What is a Caveat?

A Caveat can be entered by a person who is alleging a Will is invalid. An application is made with the Probate Registry and can be dealt with online.

The effect of a Caveat is to stop the estate being administered because it prevents a Grant of Probate being obtained by those acting for the estate.

Caveats last for six months but can be renewed.

Caveats should not be entered if a claim under the Inheritance (Provision for Family and Dependents) Act 1975 is being contemplated or pursued.

How is a Caveat removed?

The person who applied for the Caveat can withdraw it at any time if it has not been challenged. They can do this by simply writing to the Probate Registry and asking for the Caveat to be removed.

Alternatively, it may be that the Caveat is challenged by someone who wants the Will to be accepted – either the personal representative or a beneficiary. This can be done by issuing a document called a Warning. Once served on the person who lodged the Caveat, the Warning requires them to justify why it should remain in place.



They do this by entering an Appearance (a document which sets out in more detail the reason for the Caveat) with the Probate Registry.

The Appearance must be lodged within 14 days of receipt of the Warning. If accepted, the Caveat becomes permanent and cannot be removed other than by consent between the parties or by court order. If the Appearance is not lodged in time, the Caveat will be removed.

What happens if the Caveat becomes permanent?

If the Caveat becomes permanent, the parties are effectively in a stalemate as the estate administration will most likely have to be put on hold. Either one of the parties must take some action to progress matters. This includes:

- The party who is challenging the Will can issue court proceedings for a declaration that the Will is invalid; or
- The party who is in support of the Will can issue court proceedings asking the Court to find in favour of the Will.

Either way, something must happen otherwise the estate administration will be at a standstill indefinitely.

What is a Larke v Nugus Letter?

A Larke v Nugus letter is often the first step in investigating the validity of a Will. The letter is addressed to the solicitor or Will writer who prepared the Will and requests the following:

- a copy of the Will and any previous Wills the addressee has access to;
- a copy of the accompanying Will file, which should contain copies of all letters and emails exchanged during the Will writing process and notes of all discussions and meetings which took place;
- answers to various important questions regarding the circumstances surrounding the Will writing process.

Once a response to a Larke v Nugus letter is received, we can assess the initial strength of the Will challenge and consider any further evidence that will be required.



Key Documents

Original Will

It is important to locate the original Will to ensure that Probate can be granted in due course. The Executors of the Will are the people who will usually be concerned with securing the original Will. If you are not the Executor and are looking to contest a Will, you will need to obtain a copy of the Will so that you can understand the contents.

Previous Wills

If the Deceased made more than one Will in their lifetime it is essential to obtain a copy of the previous Will to establish whether or not contesting the last Will is of any financial benefit.

Title Deeds

It is important to establish what assets an estate comprises of before a Will is contested to ensure that the costs of proceeding are proportionate to the value of the estate. If there is a property in the estate it is important to look at the title Deeds (these can usually be obtained online), to ensure that the property remains in the name of the deceased and has not been sold or transferred.

Medical Records

It can be very helpful to review the Deceased's medical records, particularly the entries around the time that the Will was signed. If a Will is being contested on the grounds of lack of testamentary capacity, the medical records may contain key evidence.

It may be necessary to ask the Personal Representatives to agree to the medical records being obtained before the hospital or medical profession will release them. Some hospitals or GPs are willing to provide the medical records if you have a claim arising out of the Deceased's death which a claim challenging the Will comes under. Each organisation will have its own internal rules they need to comply with.

Medical records can take some time to obtain depending on the organisation. When they arrive, there may well be redactions in the records, for instance, contact details of a third party.



If the redactions are excessive, it can sometimes be worthwhile challenging them with the organisation who may reconsider the reasons for their removal.

Something which may assist when requesting medical records is considering what period of time you want to review. Usually, the records which are most helpful are those leading up to the Will preparation. You do not normally need records from birth or any which post-dates the Will but we would take a view on a case by case basis.



You're in safe hands!

If you would like further information about how we can help you **Challenge a Will** or have any questions, please don't hesitate to contact a member of our **Contentious Probate Team** today.

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