

Mundays Solicitors Private Client Department

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Inheritance Disputes – the New Divorce?

The last couple of years have seen a dramatic rise in the number of disputed wills. High Court figures for 2007 revealed a 153% increase in contentious probate cases and a 330% increase in inheritance disputes from 2006.¹ This increase shows no sign of abating: a recent survey revealed that 1 in 10 people are locked in dispute following a death in the previous six months.²

Causes

There are a number of reasons for the increase in probate litigation. There is a much greater awareness of the options available to the aggrieved would-be beneficiary. This is largely the result of increased media coverage. In the last month alone the cases of *MacDonald v Frost*, whereby two aggrieved daughters failed in their claim against their father's Will leaving everything to his second wife, and *Gill v RSPCA*, in which Dr Gill successfully challenged her mother's Will leaving the family farm to the RSPCA, have both been reported widely.

There are other factors. With divorce becoming more common, family arrangements are more complicated than ever before. With former spouses and children from previous marriages, the scope for a grievance to arise is increasing.

Property prices have also had an effect. Property will often comprise the largest asset(s) of an estate, and following the dramatic rise in property prices over the last decade (despite recent falls), it is considered more 'worthwhile' to pursue a claim.

Finally, with many people living longer lives and making or changing their Wills during old age, there is greater scope for challenging the validity of a Will on the grounds of capacity and undue influence.

It is worth remembering that, given the personal nature of many disputes, the motivation is not purely financial. The omission of a family member from a Will might can be taken as a personal slight and it is often the principle, rather than money, which drives litigation.

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¹ Legal Executive Journal July 2009

² Survey by Seddons March 2009

Consequences

Probate litigation is an expensive business. It is very difficult to prove the intention and reasoning of an individual who, by definition, will be absent from proceedings. In pursuing or defending any claim it is important to consider the effect of costs on the size of the estate.

There is also the emotional cost to consider. Such disputes often pit family members against one another, and the fallout is serious and long-lasting.

This must be borne in mind when considering any claim. Whilst an individual might feel they have a "moral right", this does not automatically equate with a "legal right".

A Claim-Proof Will?

It is impossible to create a Will that will be immune from all potential claims. However, there are a number of steps that can be taken to help ensure that assets are disposed of as intended:

- Prepare a Memorandum of Wishes, or explain the reasoning behind gifts within the body of the Will. The test for capacity to make a valid Will requires an individual to consider all persons that might reasonably expect to inherit. If you are omitting a family member from the Will, you should consider providing an explanation.
- Update your Will periodically, particularly after a change in family circumstances (for example, following divorce or the birth of a child). Remember that any previous Will is revoked upon marriage, unless the Will was made in contemplation of marriage.
- Seek professional advice. This will ensure the Will is properly executed, provide guidance on matters that should be considered and minimise the risk of capacity being called into question.

If you have any queries please contact Nicola Dudley who will be happy to arrange an appointment for you to see one of our solicitors.

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