

FAQ CONTESTED WILLS

CAN I SEE A COPY OF THE WILL?

Once Probate has been obtained, the Will becomes a public document and a copy can be obtained from the government website [Search probate records for documents and wills \(England and Wales\)](#) upon payment of a small fee. If there is a potential dispute, the Executors may be persuaded to volunteer a copy of the Will before Probate is granted.

CAN I STOP A GRANT OF PROBATE?

The first step is often to enter a caveat. This can be done online for a small fee on the government website [Stopping a probate application: Apply to enter a caveat - GOV.UK](#). A caveat is valid for six months after it is entered and can be renewed before the expiry of that period upon payment of a further small fee. A caveat will place a temporary block upon Probate applications.

I HAVE RECEIVED A WARNING. WHAT SHOULD I DO?

If you hold a caveat, then a person who applies for Probate will be notified of this by the Probate Registry. You may be asked to remove the caveat on a voluntary basis. If you do not agree to remove the caveat, then a Warning may follow. You have 14 days from receipt of a Warning to enter an Appearance explaining briefly what you claim or to apply for Directions if, for example, you want the Personal Representatives removed. If you fail to respond to the Warning, then the caveat will be removed, and Probate granted.

HOW CAN I CHALLENGE THE VALIDITY OF A WILL?

Most often, these claims are brought by persons who have a financial interest in the outcome.

Validity challenges are brought on any one or more of the following grounds:

- *The Will has not been signed by the Testator or it has not been witnessed.*
- *The Will is a forgery.*
- *The Testator lacked Testamentary capacity.*
- *Undue influence such that the Testator's wishes were overborne.*
- *Want of knowledge and approval such that the Will does not accord with the Testator's wishes.*
- *Fraudulent calumny which is often regarded as a branch of undue influence. This is where the Testator's mind has been poisoned by malicious distortion of facts or by lies thereby inducing the Testator to make a Will in a particular way.*

If you are the Executor of the disputed Will and wish to contest the validity of the Will, it is likely that you will need to step down from your role as Executor to do this.

Early on in a dispute about validity, it is often worth submitting a request for information about the circumstances in which the Will was prepared and executed (a Larke and Nugent request).

WHAT HAPPENS IF THE WILL IS INVALID?

Any valid prior Will takes effect, or the Estate is distributed in accordance with the intestacy rules.

PROBATE HAS BEEN GRANTED; CAN I CHALLENGE THE VALIDITY OF THE WILL?

If, for example, a later valid Will is discovered, Probate may be revoked. It is, however, easier to challenge a Will before Probate is granted and the assets have been distributed.

THE WILL IS VALID, BUT I HAVE BEEN LEFT NOTHING OR NOT ENOUGH.

Depending upon the circumstances, you may be able to bring a claim for provision from the Estate under the Inheritance (Provision for Family and Dependents Act) 1975. There is a strict time limit of six months from the date of the Grant of Probate in which to commence Court action. If you are the Executor of the Will, you can still bring a claim for provision as this is a claim against the Estate and not a dispute as to validity of the Will. However, in these circumstances, it will be necessary to separate the role as Executor from that as Claimant and to have independent advice in each capacity.

Again, depending on the circumstances, if promises have been made by the Testator during their lifetime but not fulfilled and you took detrimental steps in reliance on those promises you may have a claim in estoppel; this type of claim is often encountered where an adult child has been persuaded to work for long hours at low pay on the understanding, they will inherit the family farm, but the Will fails to leave the asset to them.

THE PERSONAL REPRESENTATIVES ARE UNDULY DELAYING THE ADMINISTRATION OF THE ESTATE.

Steps can be taken by Beneficiaries to force the production of Estate Accounts and sometimes to remove Personal Representatives altogether and replace them. However, the Court will not interfere with a Testator's choice of Executor lightly. Minor delays/disputes will not be enough. Grounds for removal include where the Personal Representative has a conflict of interest, is paying Beneficiaries before Creditors, has been convicted of an offence involving dishonesty, or is otherwise obstructing the proper administration of the Estate.