

Splitting heirs: the importance of keeping your will up to date

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Failure to keep your Will up-to-date could significantly increase the chances of your testamentary wishes being subject to legal challenge by disgruntled relatives upon your death.

Research conducted by a leading insurer has shown that one-fifth of those who had written a Will in England were planning to divide their assets unequally between their heirs. Whether this is to take care of those who may need it most, or to reward a relative who cared for the testator in old age, or just to reflect a personal preference for a particular relative - it raises the risk of your heirs becoming embroiled in costly litigation.

Guernsey Inheritance Law

If a person feels that a Will has not made reasonable provision for them, they can bring a claim in the Royal Court of Guernsey for such provision pursuant to the Inheritance (Guernsey) Law, 2011.

The provisions of the Inheritance (Guernsey) Law, (2011) which largely mirror those contained within equivalent UK legislation (The Inheritance ((Provision for Family and Dependants)) Act 1975) permit a claim to be brought by:

- a spouse or civil partner;
- a former spouse or civil partner;
- cohabitees;
- a child of the deceased;
- step children; or
- anyone "maintained" by the deceased.

If the Court is satisfied that a Will does not make a 'reasonable financial provision' for the applicant then it has a broad power to alter those testamentary wishes. This judicial discretion includes:

- a lump sum of cash;
- a transfer of property; or
- life enjoyment of a house.

The Estate of Norma Hall

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The Telegraph recently reported on a case that had come before the Birmingham County Court where such an order was made against the estate of a deceased woman.

In that case, presided over by Judge Rawlings, the Epton family defended a claim brought by Raymond Brader against the estate of Norma Hall.

Mrs Hall had executed a Will in 2001 leaving her estate to her daughter and granddaughter. The estate was valued at approximately £280,000, including a £200,000 bungalow.

The family were completely unaware that Norma and Mr Brader had been anything more than friends. It was only after Norma had moved into a care home and began to suffer from dementia that Mr Brader began to describe the relationship as 'romantic'. Indeed, he said that he had been living with Norma in the bungalow for some considerable time without the family's knowledge.

Mr Brader brought a claim under the Inheritance Act 1975 arguing that Norma's Will did not make reasonable financial provision for him in his capacity as Norma's partner. The Court agreed that some financial provision should be made for Mr Brader and ordered that he be granted a rent free life tenancy in the bungalow. In addition, in light of Mr Brader's claim being successful, the court ordered the Epton family to pay two-thirds of Mr Brader's legal costs.

Sadly for the family this means that whilst they ultimately inherit the property, they will not be able to realise their inheritance until Mr Brader's death. The cash element of Norma's estate was practically exhausted in settling legal costs (theirs and Mr Brader's).

Considerations when writing your will

To help safeguard against such challenges it is recommended that you:

- update (or at least review) your Will regularly and at any time your circumstances change materially;
- seek expert advice when considering making or varying a Will;
- make a full and frank assessment of who might be entitled to make such claims on your death;
- make some modest provision within your Will for those who may be eligible to bring a claim; and
- include a Letter of Wishes/written statement which explains your decisions, and have it reviewed by an expert.

Despite the ability for certain classes of persons to challenge a Will, having a Will remains the best way to ensure your assets are dealt with according to your wishes. However, cases like the above illustrate that a Will cannot merely be forgotten at the bottom of a drawer.

It can be helpful to discuss the provisions of your Will with your heirs in advance of your demise, especially if you plan to divide the assets unequally. Although these conversations may be difficult they may save your heirs from the disharmony and costs of future legal proceedings.

The team at Collas Crill have a wealth of experience with contentious and non-contentious probate matters. For more information, contact David Jeffery who is a specialist contentious probate practitioner in our DR department or Jo Seal for any non-contentious queries.

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