

How to tell if there is something wrong with a Will

PROBLEM

The Will says what we expected but now we are advised that this causes problems e.g too much tax to pay

Do the family agree about what should be done differently?

NO

Reach agreement by an informal settlement meeting, on MEDIATION

YES

CHANGE TERMS OF WILL BY DEED OF VARIATION. WITHIN 2 YEAR OF DEATH

PROBLEM

The Will doesn't say what we expected

Is this the most up-to-date version?

Do you have written evidence that it was supposed to say something different?

YES

NO

SEE IF YOU CAN FIND THE LATEST VERSION? CHECKING BANK / SOLICITORS / DESK / FILING CABINET / BRIEFCASE

NO

YES

Check with Solicitor or Will writer who made the Will - is it just a mistake?

RECTIFICATION OF WILL

Why do you think there is something the matter?

It doesn't benefit the family

Are you one of the following...

- A Spouse or civil partner (including after divorce)
- A Cohabitee
- A child of the family
- A person who was financially supported by the testator

YES

You may have a potential claim for a share of the estate under the INHERITANCE ACT 1974 (PROVISION FOR FAMILY & DEPENDANTS)

NO

You have NO automatic right to inherit, even if you are a blood relation and other people named in the Will are not blood relations.

The testator didn't understand what they were doing

If the Testator didn't have MENTAL CAPACITY to make a Will.

The testator was pressured into making the Will

If the Will was made as a result of UNDUE INFLUENCE (but NB this is difficult to prove and the level of pressure has to be very high)

The Will was not properly signed and witnessed

If the Will is not correctly EXECUTED

THE WILL MAY BE INVALID.
The previous Will takes effect. Or, if there is no previous Will, family members inherit in a strict order laid down by Parliament.

I was told I would be left something in exchange for caring for the testator or working for them

THE WILL IS VALID BUT YOU HAVE A POTENTIAL CLAIM IN ESTOPPEL

This flowchart is intended to give a flavour of the potential issues which may arise when challenging a Will. It is not a substitute for legal advice. The facts and circumstances of every individual case will be crucial to the advice given and the potential outcome.