

DEFENDING A WILL DISPUTE

Executors are the people who are named in a Will and have the responsibility to administer the estate of someone who has died by carrying out the wishes in their final Will. Being asked to be an Executor can seem a great honour as the person who has died trusted you to carry out their final wishes.

However, grief and money can be a potent combination and some Executors may find themselves in the middle of a dispute. This can be very worrying and stressful but there are some common themes that arise so how should they be dealt with?

I am an Executor and I am involved in a dispute

Executors have a legal responsibility to deal with the estate of the person who has died and to ensure that the terms of the Will are carried out. They have a duty to the beneficiaries to ensure that they act reasonably and fairly and without incurring unnecessary costs. It is very important to note that when someone disputes a Will, this is between the person bringing the claim (the claimant) and the beneficiaries of the estate. As the Executor, you should remain neutral regarding any claim that is brought. This can be difficult where you are personally involved, for example if you are also a beneficiary.

You must be very careful to know what your role is when you make decisions about the dispute. As an Executor you need to act in the best interests of the estate, make sure that other beneficiaries are aware of the claim and respond to any reasonable requests for information about the claim

Stepping down as an Executor

If you've been appointed as an Executor under a Will and you don't want to take on the role, you can choose to 'step down' – known as renouncing. You should decide early on if you want to act and this may be particularly important if the Will is going to be challenged or there is a family dispute. Once you have stepped down you will have given up all your Executor responsibilities.

However, if you have 'intermeddled' with the estate – such as starting to sort out the finances and paying debts, then you will not be able to renounce because you will be considered as already actively taking on the Executor role. If you have already taken out the Grant of Probate, then you will not be able to renounce.

How can a Will be challenged?

There are several ways people can challenge a Will. Some of the most common challenges are set out below:

- The Will is not valid
- The person who made the Will lacked mental capacity to make a Will
- Someone was pressurising the person to make changes to their Will before they died
- The person who made the Will did not understand what they were signing

- Someone was financial dependent at on the person who died and has not been left anything?
- Someone was made a promise by the person who died that they would be looked after

We can advise you how to continue dealing with an estate if one of these claims is brought against the estate.

Someone has entered a caveat – what do I do?

If there is a dispute over which is the final Will of the person who has died, it is possible to enter what is known as a 'caveat'. **This means that you cannot obtain Probate until the caveat has been removed. As an Executor, you can** file a warning in court if you do not consider that the caveat is justified as preventing the administration of the estate can have its own disadvantages. If the caveator will still not remove the caveat an application can be made to the court to remove it.

I have been asked for information about the estate

As an Executor you will need to respond to reasonable requests for information about the estate.

Before you disclose any information, you should consider the following:

- Who is asking for the information?
- What information are they requesting?
- What is their reason for requesting this information?
- Is any of the information confidential?
- What is the cost to the estate of providing the information?

If someone has asked for a 'Larke v Nugus' statement, this is a request for a letter setting out as much information about the circumstances under which instructions were taken for the preparation of a Will and its execution as possible.

How can GL Law help you?

We have specialist lawyers who will take time to get to know you in order to provide you with advice tailored to your specific needs and wishes.

Full and transparent information about our fees structure will be provided at the outset, and the basis of our charging agreed before we begin work.

For more information or to speak to a solicitor please contact us by calling 0117 906 9400 or email hello@gl.law

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