

The rise in will disputes in Jersey

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Recent research highlights the increasing likelihood of people being willing to dispute a will and go to Court if they are not happy with the division of their relative's estate, and this is definitely an increasing area of work in Jersey.

| On what grounds can a will be challenged?

There are a number of different grounds on which a person is able to challenge a will. The first step to take is to ensure that you, or the person making the challenge, has the legal right to do so and that the challenge is made within any legal time limits.

Reasons to challenge a will in Jersey may include:

- Lack of capacity – the will writer must have had mental capacity at the time the will was made. The test of mental capacity is often challenged where people change their Will but are suffering from an illness, or if the change is made in the days before they pass away.
- Lack of knowledge or approval of the contents of the will – such claims can arise when the circumstances surrounding the making of a will appear suspicious, such as when a will was homemade.
- Undue influence or coercion – the will writer must not have been coerced into making a will that they do not want to make.
- *Légitime* – if the provisions of a will of a person's movable estate are contrary to the statutory entitlement of *légitime* (forced heirship) provided for under Article 7 of the Wills and Succession (Jersey) Law 1993 and does not leave the person's spouse/civil partner or children their legal entitlement.

| What if the will is valid but does not provide for me?

Immovable estate

Apart from the right of a spouse/civil partner to a life enjoyment of one third of the matrimonial home, a person is free to dispose of their Jersey immovable estate (being freehold property and land) in any manner that they wish. A person has no automatic right to inherit the Jersey immovable estate of a relative so cannot challenge a will of immovable estate on this basis.

A will of immovable estate could be set aside if it could be shown that the testator did not have sufficient capacity at the time the will was written, was strongly coerced into writing their will in terms that were against their wishes, or if it was not executed properly at the time of signing. A will of immovable estate has to be read aloud to the testator by a qualified witness (such as a Jersey Advocate) before it is signed and will not be valid unless this requirement is complied with.

Movable estate

Even if a Jersey domiciled person's will of movable estate is executed correctly and is formally valid, the surviving spouse/civil partner or child of a deceased person have the right to challenge the division of the movable estate by will under Jersey's current forced heirship provision, known as *légitime*. This right only applies to an estate where the deceased was domiciled in Jersey but if this is the case, the law states that you only have testamentary freedom over one third of your movable estate. From the other two thirds of your estate you must provide for your surviving spouse/civil partner and/or children. If you do not, your spouse/civil partner and/or children are entitled to make a claim against your will of movable estate. This claim must be done in the Royal Court of Jersey and within a year and a day from the date which a Jersey Grant of Probate to the Will was issued.

Despite this, the majority of people chose to write their will of movable estate in the manner of their choosing. It is therefore very common for spouses/civil partners to leave all of their movable estate to each other in the first instance and only to their children on the death of the second of them. This is contrary to the *légitime* provisions but in this situation, it is usually considered that the children will not make a challenge for their *legitime* and will allow their parent's movable estate to pass via the will.

If a challenge for *legitime* is made in the Royal Court, there is no defence to the claim that can be stated. The claim for *légitime* is a statutory right and the Court will order that the will of movable estate is reduced, so that it only has effect over the freely disposable one third and the remaining two thirds are distributed in line with the *legitime* provisions in the law.

Why are probate disputes increasing?

There are a number of factors which explain why cases of challenge to wills and estates are on the increase:

- People now live for longer which can mean that Wills are regularly updated and altered later in life. A person changing their will when they are older or unwell can lead to concerns that they did not have the required mental capacity or were more easily influenced into making decisions about their beneficiaries
- Families are increasingly more diverse and complex with many people now marrying more than one time and having children from more than one relationship. Blended families are very common. If a person leaves their movable assets to children of a second marriage in preference to those from a first marriage, the children from the first marriage are likely to be entitled to make a challenge on the basis of their *legitime* entitlement.
- Property prices in Jersey have increased exponentially over the last 10 years meaning that estates are more valuable. Share transfer properties, which are classed as a movable asset, can form a large part of a person's estate and means that family members may be more willing to challenge a will as their potential entitlement is worth the challenge
- DIY wills are common but play a large roll in disputes. While they can be a cheap option, there can be drafting errors and issues which can cause confusion and lead to costly applications to clarify the meaning

What can I do to prevent a dispute of my will?

Seek professional advice to ensure that your will is valid and correctly reflects your wishes. It is also important that you understand the risks of a challenge by unhappy family members, beneficiaries or people that may be left out of your will but who may be expecting to benefit, and what you can do to mitigate this.

Discuss your intention and wishes with your family in advance of writing your wills so that there are no unpleasant surprises on your death. If you do not wish to do this, then a letter outlining why you have drawn up your wills in the terms you have, to be held with your wills, can explain this to your families.

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