

What happens if a Will doesn't provide for you?



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For many people the phrase “the reading of the Will” is imbued with clichéd images reminiscent of country house murder-mystery fiction. The widow in black, the family gathered in sombre expectation, the palpable sense of shock when it is discovered that the family fortune has been left to a distant relative....

The modern reality is less entertaining, if no less dramatic, for a spouse, partner or dependant who has not been provided adequately for in a Will, or left out altogether, deliberately or inadvertently.

Modern family life is no insulation either, as often there may be layers of former partners and step-families fitting together with complicated and competing needs and priorities. When someone dies suddenly the people who rely on them for support may find that adequate financial provision has not been made for them in the Will.

There are obviously things that can be done to avoid difficulties like this arising if the unthinkable occurs. There are also legal steps that can be taken to make provision for family and dependants who have not been properly provided for in a Will.

Family provision “Inheritance Act” claims

The law has developed since legislation was initially introduced in the mid-1970s to assist in a variety of such situations. It continues to develop, meeting the changing picture of family life and life expectancy.

Claims can be made by people in a number of categories including spouses, civil partners, cohabitants (of more than two years) and including adult children or step children who were being maintained by the deceased immediately before death who have not had adequate financial provision made for them

in a Will. The court can order that the division of the assets takes place on a different basis to that provided by the Will (or intestacy provisions) to achieve a fairer result taking into account all the competing and relevant needs and resources of everyone involved, and a long list of factors such as special needs and disabilities, earning capacity and even a person's conduct.

How might it all go wrong?

A typical example might involve a man and woman who co-habit having both been married before. The woman, say, sells a property to move in with her new, wealthier partner, bringing a child with her. She helps out in her partner's self-employed business for several years and runs the house. However, on his unexpected death, everything including the house and the

business is left to his grown up children under an old Will. Support provided to the child by the deceased, say a contribution to school fees or university tuition, also ceases.

A claim might be brought by either the woman or her child, or both, to address their financial and/or accommodation needs from the estate. The courts will

seek to arrive at a fair result taking into account all the relevant information.

The reading of the Will is therefore not always the end of the matter in real life, if not in fiction. It is of course better for all concerned to avoid disputes that may pitch one branch of the family against the other and to address these issues during your lifetime when there can be an open dialogue to tailor appropriate solutions.

Katharine Riley of Henmans Solicitors is a senior associate specialising in contentious probate litigation, challenges to Wills and trusts litigation. If you wish to find out more about how we can help you to plan your estate effectively and fairly or to handle probate disputes contact us on 01865 781000 or email welcome@henmansllp.co.uk.