



Viewpoint

- FAQs - Does a Will Trump an Inheritance Act Claim?
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- Free Interactive Workshops



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We take every opportunity to meet as many of you as we can so thank you to all those who have attended the workshops we have run over the last year or so, which remain a huge success.

In keeping with the times, we are running two workshops this autumn via Zoom and sticking with popular topics. The first is on inheritance tax planning on 13 October and the second focuses on Lasting Powers of Attorney on 10 November. If you are interested in joining us, please see your invitation with this newsletter for further details.

As for news within our team, I am pleased to congratulate Angharad Lynn on her recent promotion to Partner. Angharad is based at our London office, advising on a wide range of non-contentious matters and increasingly on specialist cross-border estates.

Finally, looking back at the last few months, our recent involvement with the BS9 Arts Trail in Bristol was a highlight. Our firm sponsored this wonderful event which ran from 4-5 September across a variety of venues in the BS9 postcode and celebrates around 70 local artists' work, spanning every aspect of the creative arts.

I hope you find plenty of interest in this edition.



FAQs - Does a Will Trump an Inheritance Act Claim?

Will disputes are a real concern for those who have taken the trouble to prepare their Will.

Although the starting point is that you can leave your assets to whomever you choose in your Will, the *Inheritance Act** nonetheless acts as a safety net for eligible claimants who can demonstrate that they require more financial provision than they are due to receive under the Will, which in many cases is nothing.

Who Can Bring an Inheritance Act Claim?

These people are all automatically eligible:

- spouses or civil partners including former spouses/civil partners
- children, including adults, and those treated as a child of the family by the deceased
- cohabiting partners as long as they cohabited for two years or more until the deceased's death
- anyone else who was financially dependent upon the deceased until their death.

Does That Mean a Claimant Will Automatically Succeed?

No. There is a financial stress test. Claimants have to demonstrate they are in financial need to some extent and that they are not adequately provided for under the deceased's Will or, if there is no Will, under the *Intestacy Rules***.

Is That the Only Factor?

No. There are five other factors to consider too. Any physical or mental disabilities the claimant has, any obligations that the deceased had towards the claimant, the conduct of the claimant or any other matter which it's reasonable for the court to take into account. These are weighed against the financial position of the beneficiaries in the Will or of an intestacy and within the context of the size and nature of the estate.

How Much Will a Successful Claimant Get?

Outcomes vary enormously on the facts of each case and there is no set percentage. However, expert advisors can typically advise on the range of likely outcomes, having assessed the individual facts for claimants as well as advising those faced with defending a claim.

Is There a Time Limit for Bringing a Claim?

Claimants have six months from the date of the Grant of Probate to issue their claim at court without requiring the court's special permission to do so. After which, they have a further four months to serve the claim on the executors and beneficiaries.

I Am Concerned About a Potential Claim, Is It Worth Me Making a Will?

Yes it is. It is best to mention your concerns to your advisor when you make your Will as the careful choice of your executors is crucial if you do not want family members dealing with the estate administration and maybe a claim too as executors. There are other points you can consider, including preparing a list of reasons why you wish to exclude someone - but seek expert advice as these can backfire if not carefully prepared.

If you are concerned about a potential Inheritance Act claim we are experienced in advising both claimants and defendants to reach a resolution. Please contact Fiona Lawrence who will be happy to support you.



Fiona Lawrence
Partner
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*The *Inheritance (Provision for Family and Dependents) Act 1975*.

** The *Intestacy Rules* direct who inherits where there is no Will.

Deathbed Gifts Without a Will - Are They Valid?

Covid-19 has brought into sharp focus for those who do not have their legal affairs in order, the risk of suddenly falling ill and tragically dying without their chosen beneficiaries inheriting, because they have not prepared a Will.

However, a recent case has cast light on a legal lifeline, known colloquially as deathbed gifts, legally-termed *Donationes Mortis Causa* (DMCs). These can enable a person to legally make gifts in contemplation of their death without a Will.

A Sad Story

In *Davey v Bailey*, Alan and Margaret, a devoted

Margaret's Family's Claims

Margaret's sister claimed Alan had gifted the marital home to her as a deathbed gift. She and her brother also claimed that the couple had gifted them a significant share of their sizeable assets before they died in contemplation of their deaths.

The court reviewed the three conditions necessary to determine whether the DMCs were valid:

- The gifts must be made in contemplation of impending death (although this may not be imminent, in a prior case a period of 4 months up to death was considered valid).
- The gifts must be contingent on the person actually dying. If the person makes an unexpected recovery, the gifts will be reversed.

An Ineffective Will

The judge did not allow the claims but noted the sadness of the case and expressed the view:

"...this is a classic example of how the principle (of DMCs) is not to be used as a device to validate an ineffective will."

The ineffective Will was of course Alan's former Will, which led to only Alan's side of the family inheriting the couples' joint assets as on the evidence presented, the couple had intended that both sides of their formerly-close families inherit equally from their estates.

Strike It off the To-Do List Now

We see countless examples of people leaving it too late to prepare their Wills. Wills should also be reviewed regularly to stay updated.

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married couple, died within months of each other. They had no children and left Wills which were simple, but not well-thought through. They both left everything to each other with no provisions on who was to inherit from the survivor. Margaret died first and Alan visited his solicitor to draw up a new Will. However, it was not completed before he died suddenly of a heart attack.

As Alan died last, his former Will leaving everything to Margaret failed and his estate fell to be divided under the rules of intestacy, benefitting only Alan's side of the family.

- The person must 'deliver dominion' over the subject matter of the gifts (an example would be handing over the keys of a car to be gifted to the recipient).

The judge found several problems with Margaret's siblings' claims, including that Alan's heart attack could not have been contemplated at the time the gifts were said to have been made by the couple. Also some of the alleged gifts were non-specific in nature, excluding the house.

Triggers include marriage, divorce, birth of children, property acquisition or family disputes.

If you or a relative or friend are in urgent need of a Will, we are able to provide a swift service. For more information, please contact



Leila Goodarzi
Partner
07909 682364
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Lease Extensions - How Do I Extend My Lease?

The duration of a lease is known as its 'term'. You should consider extending a lease once the remaining term falls below 90 years as the lower the term, the more expensive it is to extend. A shorter lease can impact the value of your property and ability to obtain a mortgage over it.

The Informal Route to Extend

You can contact your Freeholder directly/informally to agree a premium and new lease terms. Your solicitor will then review the title and existing lease and draft the documentation needed to extend the lease.

This is usually the fastest and cheapest route.

The Statutory Route to Extend

This is a longer, more complicated process. Your solicitor will check that you are entitled to request a lease extension and, if so, will serve a Section 42 Notice on the Freeholder.

The Freeholder should respond to indicate whether they accept you are entitled to an extension. If accepted, both you and the Freeholder should instruct surveyors to assess what the premium payable should be. Negotiations will then take place and hopefully an agreement is reached!

If an agreement cannot be reached, an application can be made to the Property Tribunal to determine the premium.

If you are looking for assistance with a lease extension, contact Lucy Giles to discuss the best route for you.



Lucy Giles
Associate
07788 214179
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Free Interactive Workshops

Thank you to those of you who have attended our workshops which have been a huge success. It's been great to see so many of you there.

We are running two workshops this autumn via Zoom; the first regarding inheritance tax planning and the second regarding Lasting Powers of Attorney. Please see your invitation with this newsletter for further details.

We thought it would be of interest to share with you all a handful of questions that have been raised at our workshops.

Our workshops are free and interactive - an opportunity for you to ask us what you want to know.

I have been appointed as an Attorney - what does this mean?

What happens if I suddenly lose capacity whilst acting as Attorney?

What extent as executor are you responsible when the deceased is a sole shareholder/director? Do they have to close down the company?

If charities named in a Will have ceased to exist, what happens?

What can you do about substantial crash in property value after date of death?

If all executors renounce, what happens then?

Does an adult 'child' have a claim on a parent's Will if that child has not been named as beneficiary anywhere in the Will?

How do I take full advantage of the residence nil-rate band to save on inheritance tax?

Save the Dates

Please see below the schedule for workshops we will host in 2022:

- Executor Workshop - 9 February (3.00 - 5.00pm)
- Inheritance Tax Planning - 20 April (4.00 - 6.00pm)
- Wills Workshop - 11 May (3.00 - 5.00pm)
- Lasting Powers of Attorney - 9 November (3.00 - 5.00pm)

For more information regarding the workshops or to be added to the invitee list please contact Laura Loveridge.



Laura Loveridge
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Find Out More About Our Services

Please contact Michelle Rose if you would like to receive a copy of the below:

- *Lasting Powers of Attorney* - losing mental capacity could happen to anyone, at any time
- *A Guide for Attorneys* - learn more about your duties as an attorney
- *Family Matters* - guidance on matrimonial and family issues
- *Five Good Reasons to Review Your Will*
- *Ten Good Reasons Why You Should Choose VVW to Prepare Your Will*
- *Private Wealth Planning for You and Your Family*
- *What Happens to Your Digital Assets When You Die?*
- *Managing Your International Assets*

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