
Excluding Someone from your Will – IPDFA 1975

Here in England and Wales, we have the freedom to dispose of our assets in the way we think fit in our Wills. Unlike many other countries, we don't have any 'forced heirship' rules governing who must receive what after someone has died.

That said, anyone making or updating a Will needs to know about the Inheritance (Provisions for Family and Dependents) Act 1975 (IPDFA 1975) which curtails this freedom to some degree.

Who can claim?

Under IPDFA 1975, certain people are able to bring a claim in Court against the estate of someone who has died, if they feel disappointed because they haven't received anything, or because they believe they should have received more.

This applies both in cases where there is a Will, or where there is no Will so that the Intestacy Rules apply.

If you are making a Will but leaving one or more of the following people out, you may need further advice to help avoid a claim and to protect the people you *do* wish to benefit.

The following people are automatically allowed to bring a claim against your estate under this Act:

- Your spouse or civil partner;
- Your former spouse or civil partner who has not remarried or entered into a further civil partnership;
- Someone living with you for a least 2 years prior to your death;
- One or more of your children or step-children (including adult children);
- Anyone you've treated as your child or children (for example, but not necessarily, adopted or fostered);
- Someone maintained by you.

Just because the people on the list above can bring a claim against your estate it does not mean that they would be successful if they did so. However, the position does need to be considered if you believe that there is the likelihood of someone on the list challenging your Will after you have died.

Can I prevent a claim?

To reduce the risk of a claim after your death under IPFDA 1975, you could accompany your Will with a Letter to your Executors, setting out the reasons why you have chosen to benefit some people and not others, or, why you have decided to leave less to one person than another. This could be for any number of reasons personal to you; perhaps there has been a family fall out, or one or more of your beneficiaries has squandered money in the past and you do not agree with giving them anymore.

You could write this letter yourself or, as is more common, with the help of your solicitor who will take the information from you and assimilate it into a more formal letter that can be stored with your Will.

Although a letter does not guarantee that a claim will fail, it can be used to explain the reasons behind your decisions and may also help to reduce the likelihood of a claim being made at all in some circumstances.

As an additional measure and if you have reason to believe that a claim will be likely, then a Witness Summary may have more impact than a letter. This is a formal statement, which we can prepare for you to assist your Executors in relation to any claim or Court proceedings that arise after your death. Although a Witness Summary does not provide any guarantees, it is a strong piece of admissible evidence in support of your decisions.

Finally, and as an incentive to prevent someone from challenging your Will, you could ask your solicitor to draft a forfeiture clause or no-contest clause into your Will. This is a clause that says the beneficiary will lose his or her inheritance if they contest your Will. There are no guarantees that a Court will uphold the clause, but it is further strong evidence of your intentions and, if the claim fails, it is likely that the clause will be upheld, and the beneficiary who has brought the claim will receive nothing.

Use a Professional

We don't recommend writing your own Will or using a Will Pack from a stationer, as the Will may not be interpreted in accordance with your wishes; it could also end up being invalid. It may also increase the risk of a successful claim being made against your estate after you have gone.

[Taking advice from a solicitor, fully trained and qualified in this area, and regulated by](#)

the Solicitors' Regulation Authority, ensures that your Will reflects your wishes and is legally sound.

We can prepare your Will to deal with a number of things, including:

- Who will benefit from your estate;
- Who will look after your children;
- Who is going to carry out your wishes after your death (your Executors);
- What happens if the people you want to benefit die before you;
- Whether you need a Trust in your Will to achieve your overall objectives;
- Whether you are at risk from a claim against your estate in the future;
- Whether need a Letter to Executors or a Witness Summary to reduce the impact of any such claim on your estate.

Being the Executor or Administrator when someone has been left out

If you are the Executor of a Will or the Administrator appointed where there is no Will, you will need specialist legal advice if you are concerned that someone is thinking about contesting the estate. This could be either under IPFDA 1975 or under another law not covered in this factsheet. As the Executor or Administrator, you may need to defend a claim if one of brought. These claims can take some time to assess, as they are often complex in nature.

We can assess the likely prospects of a successful claim being brought, whether the claim should be defended and/or if there are any other steps you should be taking to fulfil your role in administering and protecting the estate for those who were intended to benefit.

What to do next

If you would like to discuss any of the above, please contact us to speak with one of our reassuring experts about how we can help.

If you'd like more information call **01904 866139**
or email hello@rochelegal.co.uk



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