

Part 1: How to reduce the chances of a contested will

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One of the main reasons people draft a will is to give their family peace of mind. The last thing they want is for their friends and family to be squabbling over their assets when they die.

Making a will doesn't guarantee that people won't argue over your assets, but it can reduce the chances of your will being contested if it's made correctly and supported by a professional will drafter, or even better, a qualified solicitor.

There are several grounds upon which somebody can challenge a will. The main ones are:

- 1. A lack of testamentary capacity:** the person creating the will did not have mental capacity to create the will.
- 2. Lack of due execution:** either the will or the signatures on the will do not meet the necessary formalities of creating a will.
- 3. Undue influence or coercion:** somebody, typically one of the beneficiaries, had pressurised the writer of the will to create the will in the way they have.
- 4. Lack of knowledge and approval:** the person creating the will did not know of the contents of the will or fully understand what they were signing, and perhaps even signed the document without even knowing they were signing their will.
- 5. Fraud or forgery:** all or some of the will could have been made fraudulently by a third party.
- 6. Reasonable financial provision:** although not a challenge to the validity of a will itself, certain persons can make a claim under the [Inheritance \(Provision for Family and dependants\) Act 1975](#) on the basis that the

will (or if no will, the [Intestacy Rules](#)) does not leave the applicant with "[reasonable financial provision](#)".

Probate disputes are expensive to resolve and stressful. But in recent years we have seen more and more of them; potentially because of the increasing value of people's estates (especially considering property prices), A complainant may think it's worth taking the punt that it's worth spending £10,000 to contest a will if they could potentially gain £80,000. Before making that decision however they should bear in mind that the executors' costs in defending such a claim are taken from the estate.

There are many benefits in having your will drafted by a qualified solicitor. Each time you meet your solicitor to discuss your will, they will usually record a file note of your instructions and record other factors such as why you wish to distribute your estate in a certain manner, why you chose to exclude certain beneficiaries and, if relevant, notes on your mental capacity at the time of making your will. Should the will be contested, your executors can obtain copies of these notes from the solicitor as evidence of your thoughts, feelings, wishes and beliefs at the time of creating your will. This could provide vital evidence that any grounds to contest your will are flawed.

Under 'normal' circumstances the will is usually executed under the supervision of the solicitor or will drafter who drafted it and it is normal practice for at least one of the witnesses of the will to be that solicitor or will drafter. Solicitors in particular will ensure that your will complies with the formalities set out in the [Wills Act 1837](#).

Further, if the will was drafted by a solicitor, the original can usually be stored by the firm in a strong room. This limits any chances of forgery taking place following the testator's signature to the will. The will is then only released to either the person who created it or the

executors of the will upon the production of a death certificate.

The global pandemic has led to an increase in the amount of people creating new wills. Many of these have been DIY wills, which may be satisfactory on most levels, but may not put the relevant safeguards in place, as a solicitor would, to prevent your will from being contested.

All our wills are drafted and documented by fully qualified solicitors with expertise in inheritance tax planning. We have onsite storage facilities to safely store your will until it is needed.

We are currently offering a discounted wills and lasting powers of attorney package. If you would like to learn more about this offer, or have any other query regarding your will or estate, please feel free to contact private client solicitors James McMullan or Lalita Kauldhar, who will be happy to help.

James McMullan
07773 888 656
james.mcmullan@riaabg.com
www.riaabarkergillette.com



[Click here to make an online appointment](#)

Lalita Kauldhar
07957 152 457
lalita.kauldhar@riaabg.com
www.riaabarkergillette.com



[Click here to make an online appointment](#)

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