

# Four steps to reduce the chances of a contested will (Part 2)

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We set out last month the reasons why instructing a solicitor can reduce the chances of your will being contested after your death (read the article [here](#)). This month, we set out four practical steps to further reduce those chances.

## Step 1: Prove your testamentary capacity

One of the grounds for challenging a will is to argue that the testator, the person who created the will, did not have mental capacity at the time. There is a presumption that the testator has capacity and it is for the challenger to rebut that presumption. However, to counter an anticipated challenge, you could prove your mental capacity.

If you instruct a professional or a qualified solicitor, they will usually make notes on your mental capacity at the time of making your will. However, in some circumstances you may need more evidence than a solicitor's attendance note. If you are elderly or infirm, it may be necessary to either:

- a) have your will witnessed by a medical practitioner who understands the notion of capacity and can make a record to show that they have undertaken an assessment of your capacity to sign a will; or
- b) have an individual assessment by a specialist mental capacity assessor.

You will have to pay a relatively modest sum of money if you want to select either of these options, but it can help you ensure that your estate avoids incurring tens of thousands of pounds in lawyers' fees in the event of a dispute after your death.

## Step 2: A "no contest" clause or a forfeiture clause

If you plan to leave someone a gift in your will rather than cut them out entirely, you may wish to consider a "no contest" clause. This clause states that you are making a gift to somebody for a certain amount and if they challenge your will for a bigger share, they will forfeit their entitlement to the initial gift. While this does not entirely prevent challengers, who may think it is worth losing £10,000 to get £80,000, it may prevent others from taking the risk of losing that money.

## Step 3: A declaration/letter of wishes

If you do not plan to leave a close family member any form of gift you can make an explicit declaration to this effect in your will.

The declaration will state that you have considered their position and have decided not to make any provision for that person in your will and a brief statement why not.

As this will be stated on the face of your will it shows that you have given the matter some consideration and have made an informed decision. Best advice dictates that you set out more detailed reasons and background in a separate statement called a letter of wishes. This will not form part of the will but would be admissible as evidence should a claim emerge.

We often recommend letters of wishes as they can allow you to set out the background and history about the reasons why you do not feel this person is entitled to any or any more of your assets. It could be because you have made numerous lifetime gifts to them or it could be because you simply do not like them. Whatever it is, put it all down in a letter of wishes to show that you have given the matter thought. It will help you to explain your reasoning. Unlike your will, which becomes a public

document once admitted to probate, your letter of wishes remains private. However, if there is a dispute, your letter of wishes will be used as evidence in court and people other than your executor will read this.

#### **Step 4: Don't let your assets form any part of your estate when you die**

One of the best ways to ensure no dispute arises over your assets, is to dispose of the bulk of your estate during your lifetime. There are several ways you can do this. For example:

- you can transfer assets out of your name to your intended beneficiary during your lifetime;
- you can make gifts of cash during your lifetime; and
- you can place assets in trust during your lifetime.

While this sounds simple, any action you take to transfer an asset outside of your estate may still have tax consequences and you should take legal advice. It is very important that you seek appropriate advice before trying to do this.

If you need advice on any of the points raised in this article or in our previous [article](#), please feel free to get in touch with Private Client Solicitors [James McMullan](#) or [Lalita Kauldhar](#), who will be happy to help.

If you don't have a will or need to update your will, why not start the process online using our sophisticated online platform, [Settify](#). [Click here to start.](#)

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Note: This is not legal advice; it is intended to provide information of general interest about current legal issues.

