



Claims against the estate

Introduction

This helpsheet will introduce some of the reasons why claims can be made against a client's estate and what you as an advisor can do to protect your client against such claims and indeed protect your own business.

Key Learning Points

- Claims against the estate
- What is a Larke v Nugus Request?
- Do you have to respond to a Larke v Nugus Request?
- How to deal with a Larke v Nugus Request?
- How to protect your clients and your business
- What is a Will Clarity Statement?
- Why do you need a Will Clarity Statement?
- What is included in a Will Clarity Statement?
- Summary

Claims against the estate

In England and Wales, there are no restrictions on how someone can distribute their assets in their Will. (Under Scottish law a surviving spouse/civil partner and children are entitled to certain legal rights that can't be overridden by a will – for more see Key Features and Benefits sheet 27). Nevertheless, certain categories of person (mainly immediate family and dependants) may apply to court under the Inheritance (Provision for Family and Dependants) Act 1975 for provision to be made for them from the net estate where reasonable financial provision has not been made for them in the deceased's Will.

Aside from claims for reasonable financial provision from an estate, the validity of the will itself may be challenged due to how it was executed or the circumstances of its creation including the instruction taking process. The main reasons used to bring claims against estates relate to a lack of testamentary capacity, undue influence or coercion, lack of knowledge and approval or forgery and fraud. Previous surveys have found that one in four people would consider bringing a legal claim against a loved one's estate.

Relatives are often left disappointed when they unexpectedly don't inherit from a loved one's estate. This is even more common now with more complex and estranged family relationships and a more litigious society. Furthermore, many people are relying on an inheritance to get on the property ladder, fund their business ventures or provide for them in retirement.

Even if the client is confident at the time of drafting their Will that a claim would not be made against their estate, it is worth remembering that it is the situation at the time of death that is important, not the situation when they are drafting their Will. If the claim is successful the people named in the client's Will may not actually inherit and on occasion estate funds can be fully exhausted by court fees meaning there are no funds left for anyone to benefit.

What is a Larke v Nugus request?

The case of Larke -v- Nugus (1979) established that the representatives of the parties to a dispute can request information from the will writer about the deceased, the creation of their will and the surrounding circumstances. A Larke v Nugus is simply a request for a statement of truth from the person who took the instructions for the Will of the deceased, regarding the instruction taking process. The format of the request is generally a list of questions with a request for a statement and the will file(s). The solicitor who requests the Larke v Nugus will be looking to check whether inter alia, the Golden rule was applied; the client had testamentary capacity, requisite knowledge and approval; if there was any undue influence (coercion) or fraudulent calumny (poisoning of the mind); any execution irregularities, fraud or forgery or if the will was ever revoked.

Do you have to respond to a Larke v Nugus request?

Generally the answer to this question is yes, however sometimes the circumstances may be such that you consider it not appropriate to do so but advice should be sought on this. You may feel that the claim is baseless or from the wrong party but you should notify your PI insurance of the request. However there are methods of enforcement if you refuse to answer the request which are set out in s122 Senior Courts Act 1981 and Rule 31.16 Civil Procedure Rules. Don't ignore a request as this can result in serious costs implications for you. If a party are forced to issue proceedings to get information from you that you were legally obliged to provide, a court may be inclined to order costs against you.

Every effort should be made by executors to avoid costly litigation if possible and, when there are circumstances of suspicion attending to the execution and making of a will, one of the measures which can be taken is to provide full and frank information to those who might have an interest in attacking the will as to how the will came to be made. (Chapter 4 SRA Handbook).

How to deal with a request

Don't panic as they can be sent in a wide range of circumstances. In a lot of cases, if dealt with correctly, once responded to nothing further is heard. Temptation can be to defend yourself, but you need to take a more neutral stance as it is a straightforward statement of truth. Do not engage with beneficiaries 'on different sides' as this could cause issues later. Ask for all correspondence to be in writing and give yourself time to consider your responses with help if needed! Responding to a request is hugely simplified if you already have a Will Clarity Statement in place (discussed below).

How to protect your clients and your business?

When you take instructions for a client's will it is of particular importance to take full instructions accounting for the client's needs, wishes and circumstances. However, a client's will only really describes what they wish to do with their estate, and doesn't include any of their deciding factors or circumstances surrounding the Will drafting and execution, which may be questioned at a later date.

Countrywide Legacy, in partnership with Martin Holdsworth, Contentious Probate Lawyer and owner of IDR Law which specialises in Inheritance Dispute Resolution, has developed a complete Will Clarity Package which is totally unique to the legal industry. Our Software Package automatically compiles statements which fully satisfies the WHY, WHEN, WHERE, HOW and WHO when it comes to your client's Will, their wishes and the surrounding circumstances. This helps protect your business by reducing the risk of a successful challenge. It also ensures you are providing your clients with the best possible service, helping to give "the deceased a voice".

The Will Clarity package allows you to automatically generate a Will Clarity Statement, an Execution Statement (which reduces any doubts above the validity of the will itself) and a Larke v Nugus Statement which along with the Client Disclaimer offers the strongest possible protection to your client and your business.

What is a Will Clarity Statement?

All instructions for Wills should include a Will Clarity Statement to ensure that any claims made against the estate are easily defeated and that the Testator's wishes are not altered after they have passed away. A Will Clarity Statement is a standalone document signed by the client and the adviser that accompanies a Will. It is written in plain English and sets out the circumstances surrounding the preparation of the Will. The document can be drafted and signed during the will instruction taking process to ensure that the client's wishes are documented and fully understood to help protect the will from future challenges or claims on the estate. The purpose of the Will Clarity Statement is to provide extra reassurance around the client's wishes to executors, trustees and family members after the client's passing and to provide clarity around the circumstances in which the will was made. It can help to speak out for a client after their death where a will cannot. In the event that a Larke v Nugus request is received after the death of the testator, the Will Clarity Statement can be used to respond to this. A Will Clarity statement should be stored with the will for safekeeping.

Summary

This Help Sheet has provided an overview of how to protect your client and yourself against any claims against the estate and how to deal with a Larke v Nugus request should you receive one. As an Adviser, having a Will Clarity Statement is vital to prevent claims which can affect your business if the instructions taken weren't in depth enough or if particular important questions weren't raised with the client. Having a Will Clarity Statement also makes your life easier if someone does claim against an estate as the answers to the questions their solicitor will ask will all be included in the Will Clarity Statement which will minimise the work for you if a claim is made.

