

## **Challenging a Will in Scotland - can it be done and, if so, how?**

Not all that infrequently we have people in our offices who feel they maybe should have benefited after the death of a relative, but who have found out that there is no provision for them in the person's will.

Some people even want us to challenge the will. But the problem is mostly these people can't come up with any evidence of why the will is challengeable. It is not enough to say "I know Granny would have left something to me – so the will must be wrong".

The truth is that it is very difficult to challenge a will in Scotland, and to be successful you must have hard reliable evidence that something "bad" has happened in preparation of the will. If you don't have that evidence seeking to challenge a will is doomed to expensive failure.

So, what would lead to a successful challenge?

First, if you could prove the person had lost legal capacity when they signed the will and was not able to understand what they were signing.

Second, if someone was effectively duped into signing a will by someone else – in law this is called "facility and circumvention".

Third, if someone was pressurised by another more powerful person to sign the will – this in law is called "undue influence"

Fourth, if someone turned out to have benefited from a will by reason of a fraud – for example creating a false identity – that could be grounds for challenging a will.

When you think of it the overwhelming majority of wills are prepared by solicitors for clients. Any careful solicitor would be checking all the issues mentioned above before allowing the will to be signed. So, finding evidence of any of these four "bad" things is generally quite difficult.

Having said that challengeable wills can and do come up very, very occasionally. Just be sure you zone in on the evidence before taking any steps to challenge. After all, if Granny signed that will and did not mention you, the chances are she meant it.