

STRATEGIES TO MINIMISE INHERITANCE ACT CLAIMS

Whilst there are no foolproof methods, strategic will drafting plays a vital role in preventing these claims.

1

THE USE OF A SIGNED LETTER BY A TESTATOR

Testators frequently leave a signed letter, commonly referred to as a letter of wishes, alongside the will to explain the reasoning behind the provision in the will (or lack thereof). The provision provided in the will will also often match the award that a court might potentially make. Obviously, this strategy will only work to reduce the risk of a claim if the will is kept under review especially where the value of the estate varies over time.

2

THE USE OF LIFE INTERESTS

A testator may leave a surviving spouse a life interest in their estate to support them during their lifetime. Such a life interest trust enables the testator to preserve the value of their estate for future generations. While it is often considered that a spouse should receive outright provision rather than a limited life interest, it is evident that a life interest can still constitute reasonable financial provision even where the trustees could terminate that life interest.

3

THE USE OF DISCRETIONARY TRUSTS

Discretionary trusts are often used by testators who wish the trustees to have maximum control over who will benefit and when. A potential claimant under the 1975 Act will often be included within a class of discretionary beneficiaries to make reasonable financial provision for them. A letter of wishes may also accompany the will to express the wish that the potential claimant should benefit from either the income or capital.

4

THE USE OF MUTUAL WILLS

Spouses may make mutual wills that leave both their estates to named persons after the death of the surviving spouse. These wills are irrevocable from the moment they are made and create a trust over the property of the first spouse after they die. As a result, a potential claimant cannot bring a claim against the estate as the surviving spouse does not have the power to change the disposition of the estate.

The use of these strategies often provides a successful deterrent to Inheritance Act claims and provides a useful toolkit for testators who wish to reduce the risk of such claims. To find out more contact our specialist team on 0333 400 4499.