



Estate Planning

The big mistake you should avoid if you plan to contest a will

Disputing a will was once something mainly rich people did. But these days it is more common across the board. Law firms are openly spruiking services to contest a will with ads - such as "Left Out of a Will?" - popping up regularly. Some legal firms promise if you don't win, you won't have to pay legal fees or only pay a fixed fee.

Anna Hacker, national manager, estate planning, at Australian Unity Trustees legal services, says there is certainly more awareness about contesting a will. One reason is the rise in the value of the family home, resulting in a wealthier estate that is worth contesting.

Also the definition of eligible people who can challenge a will has been expanded in some states. If a deceased person has a blended family, it means that multiple partners, either through marriage or de-facto relationships, as well as children, stepchildren and grandchildren could be eligible to claim on the estate. Same-sex partners and also people who were living in a close relationship with the deceased at the time of their death - not related by family but providing domestic support or

personal care - can make a claim in some states.

Kids and grandkids these days rely more heavily on the Bank of Mum and Dad and see their parents' money as a birthright, says Hacker.

As well there are disputes because some family members believe the will has been tampered with or hasn't been properly executed. Or the meaning can be unclear, particularly if it is a DIY will. There are also examples of wills being made under pressure, for example when an elderly relative has dementia and is incapable of making a decision.

If you believe you are eligible to make a claim on the deceased estate, you need legal advice to understand if you would be successful. There are a number of strict conditions for eligibility that the court will consider, such as your age, your own financial circumstances, including your current and future needs, whether you are supported by another person, if you have any disabilities and whether you are of good character. The claim must be made within a set time from the date of the

death. In NSW, for example, it is 12 months.

Making a claim will most likely splinter family relationships as well as being complicated and time-consuming. It can be expensive too.

It is best to ignore advice that any legal costs of a challenge are to be paid by the estate, whether successful or not. Hacker says this used to be the case but "it should certainly no longer be assumed that the court will agree to this".

She says no-one should assume the costs would be paid, especially if someone was very difficult when making a claim. She says even an executor might not have their costs paid.

"If they are successful, it is more likely the costs would be covered, but if they are not I would no longer assume the estate would pay."

If you are making or revising a will and are worried that your dependants might fight over your estate, there are some steps you can take to ensure the right people receive your wealth.

Hacker advises her clients to give away some of their assets to their deserving dependants before they die. But it can be difficult to get the timing right, as you may live a long life and need the money or your home.

Just as you outline in your will who will get your estate, you can also name who is not entitled to a share.

Hacker says it is a good idea to record why you are not leaving your estate to some family members. But don't write the reasons into your will. Instead, she recommends you put it in a separate

affidavit. She says people who are left out of a will are typically enraged and are determined to challenge it.

"It is important to outline why. It is important for the court to know you have considered these people."

She says there are long waits at courts because of the COVID-19 lockdowns. In Victoria, estate cases won't be heard until 2022. But Hacker says 98% of challenges don't make it to court but settle before trial - "often on the steps of the court".

Source:

<https://www.moneymag.com.au/what-you-need-to-know-before-contesting-a-will>

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