

Can anyone challenge my Will?

Estate Planning Client Guide

While most of us would try to strike a fair balance in distributing our estate, we may not always be able to please everyone.

In some circumstances we may consider some members of our family or people and organisations (such as charities) outside the family to be more deserving or more needy than others.

As a result, a disgruntled family member may occasionally react to inheriting less than they anticipated, or nothing at all, by threatening to challenge the Will in court to gain a larger share.

However, a so-called 'challenge' is not as easily done as some people think.

How can my Will be challenged?

The law tries wherever possible to uphold the terms of a deceased person's Will, and there are only a few limited ways in which a Will can be 'challenged'. These include:

- Where the strict legal requirements for the creation of a valid Will have not been followed.
- Where the Will maker does not have 'testamentary capacity', that is, the mental capacity to understand the effect of making a Will and his or her assets and relationships. This cannot be inferred by advanced age in itself nor the onset of dementia, but must be determined by each Will maker's circumstances.
- Where the Will maker is subjected to 'undue influence'. To invalidate a Will, this must amount to extreme coercion. It is very hard to challenge a Will on the basis of undue influence.

- Under Family Provisions legislation. Separate legislation in each State and Territory allows certain family members to make a claim for provision out of your estate. This is the most common way for a 'challenge' to be made.

Can I prevent challenges to my Will?

Not entirely. However, you can certainly take steps to minimise the likelihood of claims being made. This can be achieved by consulting a professional adviser suitably qualified in the area of Wills and estate planning.

Your adviser can assist you by:

- Ensuring that your Will complies with the formal requirements of the law, including the correct signing of the Will.
- Ensuring that any suggested lack of testamentary capacity is dealt with when the Will is made so that there is evidence available, if necessary, to show that the Will maker did have capacity.
- Ensuring that the Will maker is freely making the Will, without any undue influence.
- Considering any possible claim under the Family Provision legislation and minimising not only the chances of a claim being made, but also the chances of a claim being successful.

Would you like further information?

For further information please contact your AET Estate Planner on 1800 882 218.

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