

Can anyone challenge your Will?

While most people try to strike a fair balance in distributing their estate, it's not always possible to please everyone.

Whilst you are generally free to dispose of your assets as you wish in your Will, it is possible that a person may 'challenge' the Will. Generally there are two ways to 'challenge' a Will. Firstly, a person may seek to challenge the validity of the Will itself. Secondly, a person who has not received what they expected from your estate may seek to challenge your Will by making a claim to the court for greater provision ('family provision').

Challenging the validity of a Will

The law tries, wherever possible, to uphold the terms of a deceased person's Will. There are a few ways in which the validity of a Will can be 'challenged':

- If the strict legal requirements for the creation of a valid Will have not been followed.
- If the Willmaker did not have 'testamentary capacity', that is, the mental capacity to understand the effect of making a Will, the extent of their assets and an appreciation of possible beneficiaries. Lack of capacity cannot be inferred by advanced age in itself or the onset of dementia, but must be determined having regard to the circumstances of each Willmaker.
- If the Willmaker was subject 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.

Family provision

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

Can you prevent challenges to your Will?

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

Your adviser can help:

- ensure that your Will complies with the formal requirements of the law, including the correct signing of the Will
- ensure that any suggested lack of testamentary capacity is dealt with when the Will is made so that there is evidence available, if necessary, that supports your 'capacity'
- ensure that you are freely making the Will, without any undue influence
- you consider any possible claim under the family provision legislation and minimise 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 planning specialist on **1800 882 218**.