

fact sheet

SAUTELLE WHITE

lawyers



Have you been left out of a Will?

How can I challenge a Will?

The Government has introduced laws that aim to protect certain “eligible” people who may have been unfairly left out of a Will.

How do I know if I am eligible to challenge a Will?

You may challenge a Will if you are a spouse, a defacto spouse, a former spouse, a child, a grandchild or member of the household who was once dependant on the deceased.

How long do I have to make a claim?

You must make a claim within 18 months of the passing of your loved one. The Court can extend this period only in unusual and appropriate circumstances. Do not delay if you are thinking of making a challenge to a Will.

How do I know if I have a chance of winning my challenge to a Will?

You must be sure you can prove that you have been left without adequate provision for your life – including your education and general advancement. You must also be sure you can prove that you should have been provided for by the deceased person.

What does the Court consider when making its decision?

The Court considers all the facts of your unique circumstances. Rarely are any two cases the same.

The Court may look at the provision made to you by the deceased during their lifetime as well as what was left in the Will. The Court will consider the size of the Estate and also your financial position and future. The Court will consider the real relationship between you and the deceased, and

also the relationship between the deceased and any other people with claims to the Estate.

The Court will consider if you made any financial contributions to the Estate, and also the circumstances that existed around the time of the death of the deceased. Even your character and conduct will be considered by the Court.

What will the Executor do if I challenge the Will?

It is the Executor’s legal duty to protect the original intentions of the deceased when making their Will, however in the interests of practicality, the Executor also must consider offering compromises to claims to avoid unnecessary legal costs to the Estate.

Does an agreement to vary a Will need to be approved by the Court?

If the Court considers that it is prudent for all beneficiaries and those challenging Estates to reach a settlement, and that the settlement is fair to all, it will approve a settlement agreement. In other words, you may negotiate a settlement with the Executor of an Estate if you can convince them of your claim to some benefit from a Will, but the Court must formally approve such a settlement to make sure the original beneficiaries are receiving a fair deal.

So what is the first step I should make in challenging a Will?

You need to talk to a lawyer. It is important that you get good legal advice before starting on any court challenge. A lawyer experienced in Family Provisions litigation will be able to tell you what your chances are from the outset. Often the chances of reaching some kind of settlement are quite good, even if the case never actually proceeds as far as going to court.

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