

Leaving someone out of a Will?

It is a fact of life that, even in what appear to be the closest families, there are internal tensions and dislikes. On occasion, the estrangement between relatives can become so bad that one of the parties (often, but not always, a parent) wishes to draw up a new Will either disinheriting one of their offspring or only leaving them a token amount. Indeed, we have dealt with cases where the testator has changed his or her Will regularly, depending on which of their children they had fallen out with that month.

Someone left out of a Will may have the right to bring a Family Provision Claim for further provision. The Court takes a whole raft of factors into account in deciding such an application, including the size of the Estate, the relationship between the parties, the reason why the claimant did not inherit anything, and whether it was reasonable, in the circumstances, for the claimant to expect to get something. For example, a child who has devoted the last 20 years to looking after a sick or infirm parent will, understandably, be very unhappy to discover that he/she has only received a nominal amount from the Estate.

Such a case was decided just before Christmas. The applicant daughter had lived with and looked after her mother for over 30 years; in the court's words, she 'had not had a life of her own' as she had devoted most of her time to looking after her mother. From an estate worth around \$2m, the applicant was left \$55,000. Interestingly her brothers received more than she did.

The court found that, in all the circumstances, this was inadequate, and ordered that she receive the house in which she had lived for many years, together with \$170,000 cash.

Such claims can be expensive, and tend to diminish the Estate. Depending of the result of the case, it is not uncommon for the Court to order that all costs of all parties be paid from the Estate. Since these costs can be anything up to \$50,000 for each party, in smaller Estates the bulk of the Estate can be spent on legal fees.

If you do wish to leave someone out of your Will, it is a good idea to put the reason for so doing in the Will or make a separate Statement of Wishes. This need not be elaborate, and can simply refer, for example, to that person's conduct towards the testator. On one occasion, we did have to dissuade a client from stating that she was disinheriting her son because he was a "ratbag".

We recommend that you always seek legal advice (and maybe accounting and financial advice) before making or changing your Will. This may help to avoid tax implications such as GST and a costly legal claim later so there is real value in getting proper advice and doing it right!

Please contact us on 3849 6263 for further information or simply make an appointment if you need to update your Will for any reason.