Disputes about Wills

Some of the most commonly asked questions about Disputes about Wills are discussed on this page.

1. How long do I have to make a claim?

There are various time limits for making claims, depending on the type of claim you may wish to make. The time limits are often much shorter than people expect. Even though an estate may have already been distributed to the beneficiaries, it is still possible to investigate the possibility of making a claim. We can advise you further in respect of the time limits that apply to your particular case. The most important thing you can do is to ensure you seek advice as soon as possible.

2. Who will be the other party?

If you wish to make a claim against an estate, it is the executor of the estate that will act as the other party. If you are the executor of the Will, it is still possible to make a claim. We can discuss this situation with you further when obtaining instructions.

3. How do I prove the deceased did not have Testamentary Capacity?

If you make a claim on the basis that the deceased did not have the required level of mental capacity to understand the terms of their Will when it was made, evidence as to capacity needs to be produced. This evidence is normally by way of medical reports, doctor's reports, evidence from health professionals, and statements from people in contact with the deceased at the time the Will was made.

4. Will my claim go to Court?

It is always the preferable course for matters to be settled before going to court, or at least before a hearing is set down. Settling claims outside of court, in a mediation or negotiation by correspondence, will assist in reducing legal costs. The legal costs of a full court hearing can be substantial, and efforts will be made at every opportunity to settle the matter to the satisfaction of all parties.

5. Who pays the legal costs?

The question of which party pays the legal costs is decided at the discretion of the Court. It is usually the case that the unsuccessfully party covers most of the costs of the successful party; however this is not a strict rule and can be challenged. In certain circumstances the Court can order costs be paid from the estate.

If you would like further information, or require assistance, please contact us on (02) 4731 5899 or send us an email by clicking on the 'Contact Us' page on our website.

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