



Defending an Estate

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DISPUTES

What do I do as Executor if someone disputes the Will?

As Executor you are responsible for defending the estate and upholding the Willmaker's wishes regardless of your own personal preferences.

One of the first things you need find out is the reason for the dispute. Does someone want a larger share of the estate or are they seeking to set aside the Will in its entirety?

FAMILY PROVISION

Family Provision Claims

If a disappointed person believes that they did not received adequate provision from the estate, they may bring a Family Provision Claim (FPC). Only certain persons are eligible to make an FPC and strict timelines apply.

As Executor, you need to seek advice on:

- if this person is even eligible to make a claim;
- if they have taken the necessary legal steps required to make a successful claim;
- whether they have taken those steps within the legal timeframes as set out by legislation; and
- if they have sufficient evidence to support their claim.

You may need lawyers, and likely barristers, to assist and advise you.

If a claim (or threat of a claim) has been brought against the estate, the way in which you can administer the estate will be impacted. For example, the estate may not be distributed until the dispute has been resolved.

VALIDITY

If the validity of the Will is being challenged

If a person seeks to set aside the Will completely, they may be challenging the validity of the Will because they believe that:

- the Willmaker lacked capacity when the Will was made and therefore the Will is invalid;
- the Will is poorly drafted and the Willmaker's wishes could be open to interpretation;
- the formal requirements to make the Will have not been met, and the Will is invalid; or
- the Willmaker made the Will under the undue influence of another person. In other words, the Willmaker did not make the Will freely and voluntarily.

Whether a Willmaker lacked capacity or was coerced at the time of making the Will, are legally complex questions and you are not expected to navigate these situations alone.

ADVICE

Seeking Legal Advice

If you are the Executor and you are concerned that there is a potential threat of a claim against the estate or the validity of the Will may be challenged, seek legal advice.

It is important to keep in mind that you are not the 'judge and jury' and you have a legal role to fulfil in seeing the dispute through to its resolution.

Experienced Wills and Estates Lawyers will guide you through the process and help you represent the estate if the matter goes to court.

CLIENT TESTIMONIAL

YHC Lawyers saw us through defending the estate against the contesting of my son's wishes. In general, they took the stress and strain off our shoulders when possible and gave us options in dealing with the issues that arose.

The team at YHC were always courteous, ready to assist, answer questions, support, advise, listen and acknowledge. I highly recommend YHC for their professionalism and skill in assisting those of us in such difficult circumstances.

– E.V.

More Questions?

For more information or to enquire about how we can assist you, please contact Loan Chow on **(07) 3160 3300** or lchow@yhclawyers.com.au.

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