

Wills & Estates Webinar – Estate Disputes: How Can You Prevent Your Family From Fighting About an Estate

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Webinar housekeeping

- All attendees will be on mute and their cameras turned off for the entire webinar.
- We have BD tech support live to assist with any technical issues.
- Use the chat function for any comments/technical issues.
- Use the Q&A function for specific questions related to the webinar content - Questions will be addressed at the end of the webinar.
- There will be a post webinar survey link sent at the end of the webinar, we value attendee feedback, presentation slides will also be sent to all attendees.
- We will also have a QR code linking to our feedback survey towards the end of the presentation so you can provide instant feedback.

Disclaimer

The information contained in this presentation is intended as general commentary and should not be regarded as legal advice. Should you require specific advice on the topics or areas discussed please contact the presenter directly.

Introduction



Will validity claims

- How does this differ from a family provision claim?
- Grounds for setting aside a Will
- Who is eligible to make this claim?
- How to prevent this kind of claim
 - Perspective of a lawyer
 - Perspective of a will-maker

Informal Wills

- Formalities of making a valid Will
 - In writing
 - Signed by willmaker with intention of executing a will
 - Signed in the presence of two or more willmakers
 - Witnesses attest and sign in the presence of a willmaker
- Factors considered by the Court when admitting an informal Will
 - Document
 - Testamentary intentions
 - Dispositive intentions
- Cases
- Factors for and against an informal Will

Abuse of Enduring Powers of Attorney

- Elder abuse
- What can you do to stop this occurring to someone you know
- What can you do to prevent this from happening to you

Eligible Persons	State
Spouse	All
Child	All
Step-child	All (with limitations)
Dependent	All
De facto partner (at the time of death)	All (with limitations)
Grand-child	SA, NT, ACT, WA & NSW (with limitations), VIC
A registered caring partner	VIC
Parent	WA, TAS, ACT, QLD & NT (with limitations)
Member of household (at the time of death)	VIC
Close personal relationship at the time of death	NSW
Sibling	SA (with limitations)
Former spouse or de facto partner	WA, SA, VIC & TAS (with limitations)
Spouse or partner of a child	VIC (with limitations)
Person who was at any time, wholly or partly dependant on the deceased and was either: (a) A grandchild; or (b) A member of the deceased's household (at any time)	NSW

State / Territory	Time Limit
NSW	12 months after the date of death
VIC	6 months after grant
SA	6 months after grant
WA	6 months after grant
NT	12 months after grant
TAS	3 months after grant
QLD	9 months after date of death – (and notice should be given within 6 months after death)
ACT	6 months after grant

Moral Obligation and Factors Warranting

The Two Step Process

First Question: Has there been inadequate provision for the proper maintenance, education and advancement in life?

Second Question: If the answer is yes, what provision should be made?

Similar considerations arise in answering both questions and the questions need to be answered in light of all the circumstances

Victoria

Once eligible, the claimant must show that the deceased must owe a moral obligation to make adequate provision (s 91 (4)).

New South Wales

For certain eligible persons, the claimant must first show that there are “factors warranting” provision by the deceased to the claimant. Those categories are:

A former spouse of the deceased;

a person:

- (i) who was, at any particular time, wholly or partly **dependent** on the deceased person; **and**
- (ii) who is a **grandchild** of the deceased person or was, at that particular time **or** at any other time, **a member of the household** of which the deceased person was a member; and
- (iii) a person with whom the deceased person was **living in a close personal relationship** at the time of the deceased person's death.

“Factors which when added to facts which render the applicant an “eligible person” give him or her the status of a person who would be generally regarded as a natural object of testamentary recognition by a deceased.”

Notional Estate – (NSW only)

- Relevant Property Transaction:
 - (a) a transaction that took effect **within 3 years before the date of the death** of the deceased person and was entered into with the **intention**, wholly or partly, **of denying or limiting provision** being made out of the estate of the deceased person for the maintenance, education or advancement in life of any person who is entitled to apply for a family provision order;
 - (b) a transaction that took effect **within one year before the date of the death** of the deceased person and was entered into when the deceased person had a **moral obligation** to make adequate provision, by will or otherwise, for the proper maintenance, education or advancement in life of any person who is entitled to apply for a family provision order which was substantially greater than any moral obligation of the deceased person to enter into the transaction; or
 - (c) a transaction that took effect or is to take effect on or after the deceased person's death.
- Common Examples:- Jointly held property and superannuation

Key take-aways & what you can do now

1. Prevention is better than the cure – these cases can destroy families
2. You cannot contract out (except in very limited circumstances)
3. Consider potential claimants and seek advice
4. Consider a s100 statement/statement of wishes
5. Consider early disposal
6. Review and update your Estate Plan as your circumstances change



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