



## Monthly Information Newsletter – Tax & Super

December 2021

### Where there's a will, there's often a dispute

From wine-fuelled political debates over Christmas lunch to overly competitive games of Monopoly, there are many reasons family members can find themselves at loggerheads with one another. A particularly serious scenario is when a parent passes away and leaves behind an estate that becomes a source of bitter conflict between siblings.

There's a common misconception that your will represents the incontrovertible 'final word' on what is to happen with your estate – i.e., your home, possessions, savings and any other assets you may have – when you're gone. However, this is not necessarily the case, and a 2016 report by government and the University of Queensland found that where wills are contested, the claimants are generally successful – in fact more than three in four times in the case of partners/ex-partners and children.

The table below shows some of the common grounds for why cases over inheritance are brought before a court, and how they can be avoided.

For better or worse, no will is iron-clad – but there are simple measures you can take to help ensure your wishes are executed exactly as intended when you are gone. Aside from being aware of the common scenarios overleaf and what can be done to decrease their chances of arising, it may be best to consider:

- Engaging the assistance of a professional.
- Avoiding DIY will kits or at least seeking assistance when completing one.
- Revisiting your will at least once every few years, especially if your life circumstances have changed (e.g., as a result of marriage or divorce).

SCENARIO	HOW TO MITIGATE THE RISK
<p><b>Casting doubt on the deceased's capacity</b> Legally, a will is only valid if the person who made the will had a full understanding and appreciation of what a will is and the assets it is dealing with. A will can therefore be contested if, at the time of being produced, the deceased's decision-making capabilities may have been impacted by a mental disability or condition (such as dementia) or even just the effects of medication.</p>	<p>It makes sense to consider drafting your will while still having full capacity instead of putting it off until sickness or advanced old age. A will can always be updated if circumstances change. In some Australian States, if a person does not have the requisite capacity to make a will, they can seek the assistance of the court to make or update one.</p>

<p><b>Undue influence</b>  It's reprehensible, but it does happen: a vulnerable elderly person is coerced or maliciously convinced by a family member, friend or carer to distribute their estate in a certain way via their will.  Legally, this is only valid if the will was made freely and voluntarily – so anyone who's able to demonstrate suspicious circumstances can succeed in having it overturned.</p>	<p>In this instance, it may be best to meet one-on-one with your lawyer without any of your beneficiaries present – and to seek their help if you feel anyone is exerting undue pressure on you.</p>
<p><b>Family provision claims</b>  Many will disputes are raised on the grounds of 'family provision'. Even if they are not included in the will, a family member can apply to receive some of a deceased person's estate if they can demonstrate that they have been left "without adequate provision for proper maintenance, education and "advancement in life". It's not only blood relations but stepchildren, spouses and other current or former members of the family who can make this claim if they are financially struggling or dependent.</p>	<p>If you have particular reasons for excluding a family member from your will, you may wish to consider engaging a lawyer to specifically document these reasons as well as any evidence supporting them. Alternatively, you may wish to provide for this family member on your own terms to prevent them from embroiling other beneficiaries in a dispute over the fact that no provision had been made.</p>

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