Contesting a Will

Date : July 5, 2023

Contesting a Will

Contesting a will occurs where a person claims they have not received adequate provision under the deceased's will. The law permits a Will to be altered after the consideration of several factors.
It begins with the drafting of a will. The will maker attempts to balance the competing interest of beneficiaries that they believe should benefit. Our Estate Planning Solicitors will be able to advise as to the moral obligation that may be owed to the various parties in your life. If one of these parties feels as though they deserve more or are entitled to more, they would likely exercise their right under the Family Provisions Act and contest the will to seek adequate provision.

While contesting a will does occur, it is not a guarantee as the range of potential beneficiaries is definite but not restricted to family members only. The law aims to use an objective assessment in an attempt to address the lack of provision for sometimes complex relationships that occur between the deceased and the potential beneficiaries.

If a claim is successful and it is found that greater provision should be made, then the Court must look at various criteria such as;

- the size and nature of the estate and the types of assets and liabilities over the estate;
- any physical, mental or intellectual disability of the applicant;
- any contribution of the applicant to the estate;
- whether the deceased person maintained the applicant's lifestyle; and
- the financial resources or the financial need of the applicant.

The last criteria of financial need can be argued by the applicant and has considerable weight in the Courts and have persuaded judgments of making provision for the applicant in cases where financial need is evident.

Remedies sought by applicants in such claims are often those of a share in the estate. It often depends on the types of assets held in the estate, for example, if the assets of the estate are limited to a property and the beneficiary has a life estate or is living in that property, then it is more unlikely that the Court will order for the property to be sold so that the claimant may get a share in the assets of the estate.

To be able to make such a claim, it must be done within the time limit of 6 months from the date of probate or letters of administration. If the final distribution of the estate has occurred, it is less likely to have an extension to this time limit granted.
While litigation is always an option, it is recommended that the parties attempt to settle the matter prior to court due to the high costs of litigation which often significantly deplete the total

value of the estate. It also affords control to the parties and allows them to have a greater say in the final outcome.

The law imposes an obligation on the testator to adequately provide for those that the testator has a responsibility to. If it can be proved that this obligation is sufficiently fulfilled then the risk of applicants challenging a will can be mitigated.

Our Estate Planning Solicitors will be able to advise as to the possible was to mitigate these risks and fulfil the obligation to those in your life that may possible contest your will.

More Information
If you wish to obtain further information, advice or assistance in updating your Will, please contact one of our Will Lawyers in our Wills and Estates team at Matthews Folbigg on 9635 7966, email us at estates@matthewsfolbigg.com.au or through the website www.matthewsfolbigg.com.au

DISCLAIMER: This article is provided to readers for their general information and on a complimentary basis. It contains a brief summary only and should not be relied upon or used as a definitive or complete statement of the relevant law. Liability limited by a scheme approved under Professional Standards Legislation.