



AVOIDING FAMILY PROTECTION CLAIMS

At some point in our lives each of us will need to consider one or both of these questions:

1. How will my assets be distributed after my death?
2. Somebody close to me has died – have I received a fair share of his or her property?

The answer to the first question will ultimately lie with you, but to protect your family from any uncertainty about the distribution of your property after your death you need to carefully plan for the distribution of your assets. The asset planning that you choose will have an impact on whether any of the family members that you leave behind will ask themselves the second question and potentially bring a claim against your estate.

How will my assets be distributed after my death?

The law tells us in general who we are morally expected to provide for in our will. Therefore, whilst you may have good reason for excluding your layabout son from your will, he may not see it that way and he may decide to bring a family protection claim against your estate after your death. And the Court may agree with him – to a degree anyway. The resulting upset of your will can have a lasting and damaging effect on the family members that you leave behind.

Family Protection goes beyond financial considerations – you also need to consider the emotional effect that your will may have, not only to the person that you may choose to exclude from your will, but also for your other family members.

Planning how to dispose of your assets may be one of the most important decisions that you make in your life. It can be crucial to the welfare of your family that you receive good quality legal advice before making any far-reaching decisions.

You may need to give some thought to your existing will. Under the Property (Relationships) Act, spouses, de facto partners and the children of your relationship (not necessarily your biological children) can all bring a claim against your estate.

To achieve the outcome that you desire from your asset planning you may need to set up a trust. Once the property that you wish to be excluded from your estate has been placed in the trust it should generally be safe from any claim by disgruntled family members.

Somebody close to me has died – have I received a fair share from the estate?

If somebody close to you has died and you don't think that you have received a fair share of the estate you should take legal advice as soon as possible. There are time limits for challenging a will. If you delay you may find yourself out of time to bring a claim against the estate. You will need time to evaluate the advice given to you and decide on a course of action.

Taking a family protection case to Court can be slow and expensive. The best option is often to settle the case out of Court. This can save time, stress and money. Our family protection experts are well practised in assessing the merits of a claim and advising you on the best course of action.

For more information, please contact one of our offices.

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