

EXCLUDING SOMEONE FROM YOUR WILL

Although it is possible to exclude someone from your Will, there are rules contained in the Inheritance (Provisions for Family and Dependents) Act 1975 (IPFDA 1975) which may prevent someone from being excluded.

IPFDA 1975 allows certain aggrieved parties to make a claim to the Court against the estate of the deceased where they feel they were entitled to receive something or should have received more.

If you would like to make a Will where you are considering excluding someone, seeking professional advice may help avoiding a potential future claim against your estate.

The following people, if excluded, have an automatic right to make a claim:

- your spouse or civil partner;
- your former spouse or civil partner who has not re-married or entered into another civil partnership;
- someone living with you for at least 2 years prior to your death;
- any of your children or step-children (even if they are adults);
- anyone you treated as your child (even if they are not adopted or fostered); and
- someone you have provided maintenance for.

Mitigating the risk of a claim

It is possible for you to give your executors a letter supplementing your Will. In the letter you can include your reasons for why you have opted to distribute your estate in the way that you have. In the event that someone makes a claim, this will assist the Court in reasoning whether a claim fails or succeeds.

Alternatively, you may have a Witness Summary drafted which can be used by your executors as admissible evidence where a claim arises.

An additional, more stringent measure could be to ask your will-writer to incorporate a forfeiture or a no-contest clause. This imposes a burden on the beneficiary that if he/she attempts to contest your Will, they may lose their inheritance. Although it cannot be said with absolute certainty that such a clause will be enforced, it provides strong evidence of your intentions.

Executor or administrator

If you are either an executor of a Will or an administrator where there is no Will, it is important for you to seek professional advice where there is potential for someone to contest the estate.

Note: this can be a complex area, but we will be able to help you. If you are considering excluding someone or need to have your Will drafted our professionals can ensure the risks are minimised and that your Will is favourable to your wishes.

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