

Excluding someone from your Will - The Inheritance (Provision for Family and Dependants) Act 1975

Making a Will is the only way you can be sure that your wishes will be carried out when you're no longer alive. However, the Inheritance (Provision for Family and Dependants) Act 1975 makes it possible for certain individuals to challenge the level of inheritance they have received from you, after you have died. If the court believes that a Will fails to make 'reasonable financial provision' for that person, then it may divert assets from other beneficiaries to that person.

Who may make a claim for reasonable financial provision?

- Spouses and civil partners
- Former spouses and civil partners who have not remarried (depending upon the terms of your divorce)
- Children and other individuals treated by you as children
- Someone cohabitating with you for two or more years immediately prior to your death
- Financial dependants

The "relevant factors" when considering a claim

- **The financial position of the person making the claim**

If you exclude someone who is in a poor financial situation, their claim is likely to be stronger. Conversely, if someone is working and making their own way in life, their claim may be weaker.

- **The financial position of the beneficiaries**

If your beneficiaries are in a strong financial position, then their defence is likely to be weaker. Cases show that charities are also considered to be in a weak position in comparison to the needs of individuals.

- **Any obligations or responsibilities** you might have had to someone at the time of your death.

- **The size of your estate**

The larger your estate, the more unreasonable it may seem that you excluded someone.

- **Financial provision due to physical or mental disabilities**

Whether the potential claimant or the beneficiaries have a need for financial provision due to physical or mental disabilities.

Can I prevent a claim on my Will?

Unfortunately, if you do make the decision to exclude someone, there may be little you can do to prevent a claim if the claimant is entitled to make one.

While you may wish to leave a statement or a letter with your Will, explaining why you have made your decision, this alone will not be enough. Furthermore, the court may take into consideration gifts made by you during your lifetime, if it is believed that these were made for the purpose of defeating a potential claim.

You should think about whether it is appropriate to exclude a particular person in the circumstances. Each individual case will be different and it is sensible to apply the 'relevant factors' to your circumstances, as this may give you an impression as to how likely a claim may be made.

In England and Wales you are entitled to leave your possessions to whoever you choose. It is vital that you make a Will so you are in control of the decision, particularly as, for most people, it is highly unlikely that their Will will be challenged.

However, if you are thinking about excluding someone from your Will and they fall into the category of people that may make a claim, you should be aware that your decision may be challenged after your death. If it is your loved ones who you wish to benefit, they may get caught up in an unpleasant dispute after you've gone.

If you would like to discuss any of the points above please contact our Inheritance and Trust Disputes team on 0800 923 2070 or email pc.enquiries@roydswithyking.com