

We have specialist solicitors for each area of law in which you might require assistance including:

- Car Accident Injury Claims
- Commercial Litigation
- Criminal Law
- Employment Law (Unfair Dismissal & Underpayment Claims)
- Equal Opportunity / Discrimination Claims
- Estate Disputes & Inheritance Claims
- Family Law
- Migration Law
- Personal Injury / Public Liability Claims
- Probate & Letters of Administration
- Traffic Charges
- Victims of Crime Claims
- Wills / Powers of Attorney & Advance Care Directives
- Workers Compensation



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## CONTESTED ESTATES and CHALLENGES TO A WILL



Established in South Australia, our professional, friendly and supportive team is committed to providing you with the highest standards of service.

Our goal is to relieve the stress of your situation by providing sound advice and professional legal assistance.

To this end our Service Charter is based on six fundamental principles:



### Respect

We work for you and acknowledge that as our client you deserve our attention and respect at all times.



### Quality Service

We listen to your needs and ensure that you are fully informed and properly advised at all key stages.



### Professionalism

We have the experience, competence and skill necessary to provide the legal service you need.



### Knowledge

Through continuous and ongoing research and training we are up to date on all aspects of our areas of speciality.



### Honesty & Integrity

At all times we will be open and honest and follow through on our commitments to you.



### Best Outcomes

We work hard to achieve the best outcome for you in the circumstances of your case.

We look after our clients and build a relationship of trust so that they are confident to come back whenever they need a lawyer.

# When might I be involved in a contested estate?

Contested or disputed estates involve complex legal issues and you might find yourself in need of expert advice and representation if you are involved in one of these situations:

- You have been left out of a will altogether;
- You weren't left as much in the will as you think was right;
- You want to protect a provision made to you in a will that is being challenged by someone else;
- You are Executor of a will that is being challenged;

## Inheritance claims



Even if a will is valid, in some circumstances a person who has been left out of a will, or considers that they haven't been adequately provided for in the will, may apply to the court for the estate to be reallocated. Those who are entitled to make such an inheritance claim under certain circumstances are:

- The deceased person's spouse;
- A domestic partner of the deceased person;
- A child of the deceased person;
- A child of a spouse or domestic partner who was maintained by the deceased person;
- A grandchild of the deceased person;
- A parent of the deceased person;
- A brother or sister of the deceased person

In these cases the issue isn't whether the will is fair but rather who has the greatest need for provision from the estate. The person making an application must establish that the terms of the will fail to provide adequately for their proper maintenance, education or advancement having regard to their personal circumstances and needs.

Therefore, a claim can also be made in circumstances where all of the children of the deceased have been provided for equally. If one of the children has a disability or is disadvantaged in some way and so is not in as good a financial position as the others then they may be entitled to a greater share of the estate.



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An inheritance claim can also be made if there was no will and the person died intestate.

There is a time limit to making such a claim and if you are considering doing so you should obtain legal advice promptly. Without notice of a dispute the assets of the estate can be distributed quickly and may be lost forever. Prompt action can help to ensure that the assets are identified and secured so that they remain available to the person making the claim.



## Invalid wills

The validity of legality of a will might be challenged for a number of reasons such as:

- It simply wasn't the deceased's last will and a later one replaced it;
- The person didn't have the mental capacity meaning that at the time they made the will they didn't understand what they were doing;
- Someone put pressure on them or forced them to make the will;
- The will has been forged.

If a will is declared invalid by the court then the most recent valid earlier will of the deceased takes its place. If no earlier will can be located then the deceased would be deemed to have died 'intestate'. The law specifies how an intestate estate is to be distributed.

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## Applications to rectify a will

Even if a will isn't actually disputed, problems can arise for instance when the wording creates some confusion or uncertainty. Anyone with a proper interest in the estate can make an application to the court to determine how it should be interpreted. For example, if the person leaves something to 'my children' did they also mean their step-children? If they refer to 'my grandson John' and they have more than one grandson by that name who did they mean?



Whether you are an applicant seeking provision out of an Estate, you are seeking to protect provision which has been made for you where the will is being challenged, or you're an Executor dealing with a claim, cases involving contested wills or inheritance claims require a specialist solicitor experienced in these areas. A probate lawyer will not always be experienced in the litigation and court room work that is involved in these cases.

Websters Lawyers have solicitors who specialise in inheritance claims and estate disputes.



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