

Anyone over 18 can, and should, have a will

Wills determine the fate of your assets, but when things don't go to plan, it pays to have a professional on your side.

No one likes to think about their eventual death, but at some stage you have to prepare for the inevitable.

If you want your assets to be distributed the way you have decided, you need to draw up a will.

As the old saying goes, you can't take it with you.

During your lifetime you'll want to get the allocation of your property and possessions right.

Don't wait until you're on the verge of death, either.

Anyone over 18 can, and should, have a valid will.

Wills and inheritances are no longer the domain of the upper end of town, however.

Booming Sydney house prices and superannuation nest eggs have created small fortunes for some families from modest backgrounds to carve up – or contest.

"A family inheritance isn't painless to divide," says Graeme Heckenberg, of Heckenberg Lawyers, a Sydney CBD firm that specialises in wills and estates.

"You have to take from one person to give to another."

It's a painful experience to be left out of a will – not just because of the financial consequences but because it can feel as if you were not loved.



Wills - as the old saying goes, you can't take it with you.

"It can be an affront to be left out or given less than a fair share," Heckenberg says.

However, the discovery that you are not a beneficiary doesn't mean you are out of options.

"If a will has been poorly made or is unfair, you may contest it."

To contest a will, you first have to prove you're eligible.

In other words, a spouse, an immediate

family member, a dependant, or someone who was in a de facto relationship with the deceased at the time of death. Claims for "family provision" must be referred to mediation before a final hearing is allocated.

Many disputes are settled by negotiation at mediation.

"It's a chance to work things out on agreed terms and saves the legal expense and stress of a final hearing, which can include giving

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evidence and being cross-examined," Heckenberg says.

If mediation fails, however, your case will end up in front of a judge.

If that happens, a specialist lawyer is the best way to get a desirable outcome, he says.

Judges who oversee estate cases are given wide discretion, which means estates are different from most areas of law.

Although you may be eligible to contest, you must also establish that you have "need", Heckenberg says.

This can be tricky. "Whether or not you have need is basically up to the judge," he says.

"A judge may use that wide discretion to say that having a mortgage to pay isn't a need, because it demonstrates that you own property.

"Another judge may find that an adult child whose business has failed deserves further provision from the estate. No two cases are exactly the same."

You may think your case is fair, but there's no guarantee you'll get anything: "If you're eligible, the court has to listen to you, but it doesn't have to agree. You have to be ready for these possibilities."

A will that has been poorly-made (whether by mistake or deliberate unfairness) can affect lives, Heckenberg says.

"I enjoy getting results in this field because it's so personal. Many of my clients have been successful, and received amounts of money that have changed their lives."

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www.sydneywillslawyer.com.au

Suite 72, 183 Macquarie Street, Sydney NSW 2000



Ph: (02) 9221 2779

