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Challenging a Will

Have you been left out of a Will? The Government has laws that aim to look after certain people who may have been unfairly left out of a Will. And “unfairly” is the key word in this area of law – if you’re fairly well off and well provided for without your desired inheritance you may find it a lot harder to convince a judge you were treated unfairly.

If you are a spouse or defacto spouse, a former spouse, a child, a grandchild or member of the household who was once dependent on the deceased, you may be eligible to challenge a will.

This means if old Auntie Mavis who lives in Scotland (who you’ve never actually met but sent a birthday card to your mother when she was young) dies without leaving you anything, you’d be unlikely to fit into the category of an eligible person in challenging her Will.

If you think you might be eligible then there’s not a lot of time to waste - you only have 18 months to make your claim after your loved one has passed away.

Courts can be pretty conservative in trying to follow the directions given by the deceased as closely as possible, but successful challenges frequently do happen, so what does the Court consider in challenging a Will?

The Court will look at how the deceased looked after you during their lifetime. It will consider the size of the Estate and the relationship of you to the deceased. The Court will even examine your character and your conduct around the time of the death of the deceased.

Good news if you are feeling left out is that the chances of settling these kind of claims before Court are often good, as Executors of Wills are often inclined to settle disputes rather than run up unnecessary costs to an Estate.