

Excluding Someone From Your Will: Can they still claim from your estate?

Here in England and Wales, we often like to think we have complete freedom when disposing of our assets in our Wills. Unlike many other countries, we don't have any 'forced heirship' rules to determine how someone's estate must be distributed after they die. As such, it is usually believed that your choice of who will and will not receive your assets after you are gone cannot be undermined.

However, this is not the full picture. If you are making or updating a Will which excludes certain people, you need to know about the Inheritance (Provisions for Family and Dependents) Act 1975 (IPFDA 1975), which could allow those who are excluded to claim something from your estate.

What is an IPFDA claim?

Under the IPFDA 1975, certain people can bring a claim in court against the estate of a person who has died. An IPFDA claim can be made in situations where the deceased left a Will, or where there is no Will. In the latter case, the [Intestacy Rules](#) apply so an IPFDA claim may be used to alter the effects of these rules.

If you are making a Will which leaves people out, it is important to be aware of the possibility that those people may be able to make an IPFDA claim. They might feel angry or disappointed that they haven't received anything from you, or because they believe they should have received more.

Who can claim?

Only certain kinds of people can bring IPFDA claims against an estate. The following people are automatically allowed by the IPFDA 1975 to make a claim:

- Your spouse or civil partner
- Your former spouse or civil partner, who has not remarried or entered a further civil partnership
- A cohabitee who has been living with you for at least 2 years prior to your death
- One or more of your children or stepchildren (including adult children)
- Anyone you've treated as your child or children (for example, but not necessarily, adopted or fostered)
- Someone maintained by you.

However, just because the people on the list above can bring a claim against your estate, it does not mean that they would be successful if they did so.

Reasonable financial provision

For someone making an IPFDA claim to be successful, they must show that they have not been given 'reasonable financial provision' from your estate. Many different things are considered when determining what reasonable financial provision would be for someone claiming. However, the IPFDA 1975 makes establishing this somewhat easier for spouses and civil partners.

Determining what is reasonable financial provision

This is the most technical part of an IPFDA claim. It will involve the court looking at many different factors in a case. A few examples are: the size of the estate; the deceased's wishes; the deceased's relationship with, and obligations towards, the claimant; and a comparison of the claimant's needs against the needs of the current beneficiaries of the estate.

Because so much will hinge on the unique circumstances of the IPFDA claim at hand, it can make it difficult to predict their chances of success.

Can I prevent an IPFDA claim?

If you believe that there is a chance of someone challenging your Will after you have passed away, it is important to consider what you can do to prepare against it. You may need further legal advice to protect the interests of the people you do wish to benefit in your Will.

Whilst the possibility of an IPFDA claim can never be ruled out entirely, you can take action to reduce their likelihood or their chances of succeeding.

Discussing your decision with the potential claimant(s)

This may not be appropriate in all situations, but ensuring your decision is not a surprise to the people you have excluded, and helping them to understand your reasons behind it, may stop an IPFDA claim from being brought in the first place.

Writing down your reasons

You could accompany your Will with a Letter to your Executors, setting out the reasons why you have chosen to benefit some people and not others, or, why you have decided to leave less to one person than someone else. Naturally, there could be any number of personal reasons behind this; perhaps there has been a family fall out, or one or more of your beneficiaries has squandered money in the past and you do not agree with giving them any more.

You could write this down yourself but it is more common to write it with the help of your solicitor, who will take the information from you and assimilate it into a more formal letter that can be stored with your Will.

Although a letter does not guarantee that a claim will fail, it can be used to explain the reasons behind your decisions and may also help to reduce the likelihood of a claim being made at all in some circumstances.

As an additional measure, and if you have reason to believe that a claim will be likely, then a Witness Summary may have more impact than a letter. This is a formal statement to assist your Executors in relation to any claim or court proceedings that arise after your death. Although a Witness Summary does not provide any guarantees, it is a strong piece of admissible evidence in support of your decisions.

Forfeiture clauses

Another option is to add an incentive to prevent someone from challenging your Will. You could ask your solicitor to draft a forfeiture clause or 'no-contest clause' into your Will. This is a clause which says that a beneficiary will lose his or her inheritance if they take any action to contest your Will.

There are no guarantees that a Court will uphold the clause, but it is further strong evidence of your intentions. If the beneficiary makes a claim and it fails, it is likely that the clause will be upheld, and the beneficiary who brought the claim will receive nothing.

Acting as an Executor or Administrator when someone has been excluded from a Will

If you are the Executor of a Will, or an Administrator appointed where there is no Will, it is important to seek specialist legal advice if you are concerned that someone may claim against the estate. There are other ways, besides the IPFDA 1975, in which estate may face challenges. As the Executor or Administrator, it will be your role to represent the estate in any claims that are brought. These claims can take some time to assess, as they are often complex in nature.

At Roche Legal, we can assess the likely prospects of a successful claim being brought, determine whether the claim should be defended, and guide you in fulfilling your role of administering and protecting the estate for those who were intended to benefit.

Take professional advice

When making a Will, we strongly recommend against writing it yourself or using a Will Pack from a stationer. If you do so, you run the risk that your Will may not be interpreted in accordance with your wishes, or that it ends up being invalid. It may also increase the

risk of a successful claim being made against your estate after you have gone. It can end up costing you far more than you saved initially by not taking advice from a professional.

Taking advice from a solicitor, who specialises in this area of law and is regulated by the Solicitors' Regulation Authority, ensures that your Will reflects your wishes and is legally sound.

Roche Legal can [prepare your Will](#) to deal with a number of things, including:

- Who will benefit from your estate
- Who will look after your children
- Who is going to carry out your wishes after your death (your Executors)
- What happens if the people you want to benefit die before you
- Whether you need a Trust in your Will to achieve your overall objectives
- Whether you are at risk from a claim against your estate in the future
- Whether you need a Letter to Executors or a Witness Summary to reduce the impact of any such claim on your estate.

How Roche Legal can help

Dealing with legal issues can be confusing and stressful. We understand this, and we're always on hand to untangle jargon and offer support.

If you need advice on any of the issues raised in this help guide, please don't hesitate to [get in touch](#). Roche Legal is an award-winning legal practice, offering practical and caring advice.

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