

3/8/2014

I want to leave someone out of my Will

Can I prevent an inheritance claim under the Family Protection Act?

As a will-maker you are entitled to leave your property to anyone you wish. However, under the Family Protection Act a will maker has a moral duty to make adequate provision for the proper maintenance and support of the close members of their family. If a person fails to make proper provision for these family members in their Will or they are not adequately provided for by the laws of intestacy then that person can make a claim in either the Family Court or the High Court for provision from the estate.

Reducing the risk of a claim

There are ways to reduce the risk of a Family Protection Act claim. These include:

- Ensuring property is registered in joint ownership. Therefore, when one person dies ownership of that property will legally go to the other person. The property will not form part of the estate and cannot be passed on under the Will;
- Making gifts before death will ensure that the property will no longer be part of the estate;
- Setting up a trust and transferring property into that trust prior to death. Note however, any outstanding debt owed by the trust to the deceased will be part of the estate;
- Although this may not necessarily prevent a claim under the Family Protection Act, it is very helpful if a detailed statement setting out the reasons for not including someone in the Will. This could be for various reasons such as having already provided money or property to the individual being left out or because of their behaviour or conduct (disentitling behaviour);
- Preparing an enforceable contract leaving property by Will.

Before preparing a Will it is important to get good legal advice. Graeme Withers and Julie Withers of Graeme Withers Law are experienced Solicitors who can assist you with all matters concerning inheritance claims, making Wills and family matters. Please contact Graeme on (04) 478 4889 (027) 715 5421 or Julie on (04) 478 4888 (027) 478 4888 or by email info@witherslaw.co.nz

This note is intended for general information only. It is not intended to be relied on as a substitute for legal advice which focusses on individual circumstances.