



WILLS

Matter

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THE WILLS VARIATION ACT AND THE EXECUTOR

As we have discussed in separate Wills Matter columns, a disinherited spouse or child may bring a claim or lawsuit against the estate of the deceased under the Wills Variation Act. The executor is often the deceased's friend or family member. When a spouse or child brings a claim or lawsuit, the executor is in a precarious position because of the conflicting interests he must weigh. Does the executor stand up for the wishes of the deceased or does he support the surviving spouse or child? What if the executor is also a spouse or child and feels entitled to more than the Will entitles him to?

To commence an action under the Act, a disinherited spouse or child issues a Writ of Summons and Statement of Claim. The executor will be named as a party to the action. The executor will likely be a witness in the trial because evidence of the estate's assets and liabilities may be required. Despite the fact the executor may attend trial, he or she should remain neutral in the dispute.

If there is a claim against the Will, the executor should continue with his or her duties, but should not distribute assets to either the beneficiaries under the Will or claimants under the Act. If the executor distributes the estate to the beneficiaries and the claimant is successful, the executor could be personally liable for any amount owing to the claimant.

If the executor is an entitled claimant under the Act or a beneficiary under the Will, the executor may wish to step down as executor to better advocate for his or her own position. If the executor wishes to commence an action under the Act, that executor should not apply for probate and must step down because the executor cannot be both the plaintiff and defendant in an action under the Act.

As you can see, the legal issues can be complex and there is a distinct possibility of personal liability - if you are an executor and involved in estate litigation, be sure to seek the legal advice of an experienced Wills and Estates lawyer.

Contact Fulton & Company's Wills & Estates Team

if you have any questions regarding wills or estate matters.

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