



LEGACY LAW

Protecting the assets in your family tree

HOW TO AVOID GOING TO COURT

NSW is the second most litigious jurisdiction in the world. This is according to some well-informed legal commentators, who also remind us that former prime minister Paul Keating once said, *'We are what we should be – truly the land of the fair go.'* Having immigrated here permanently in 2002, I can say, as a lawyer, that I've seen the fair go principle abused and present some sad facts to underpin this observation.

Sad Fact #1

When someone decides to sue you, even without merit, they can. Though the onus is normally on them to prove their case, you still need to mount a defence. Our 20 years' experience tells us such events deliver not only health-damaging stress but also unwanted financial outlay. Indemnity costs are rarely awarded (though we've enjoyed occasional success in this area). In short, people defending cases experience high levels of frustration *and* expense ... and they need solid legal support.

Sad Fact #2

The challenging of Wills has grown enormously in recent times. Section 57 of the Succession Act 2006 in NSW sets out who may apply to the Court for a family provision order if they think a Will is unfair. Potential challengers include most relatives and people who may be described as 'carers'. There is a sense in the community that everyone gets a prize. Great care is needed *to ensure that what is desired to happen actually does happen*. This is an area where our hard-won expertise is highly valued.

Sad Fact #3

Lawyers who frequent the Court and don't settle disputes may lack scruples. Their strategy often is to put the maximum pressure on a client with a view to forcing capitulation on the steps of the Court. This trap for the unwary can prove very expensive. At Legacy Law we are awake to what's going on in this 'game' and we steer and advise clients safely away from it, preferring instead to work to a plan with, and for, our clients.

Sad Fact #4

The lure of a 'no result, no fee' method of charging often brings disappointment. It sounds good until you get a bill for a 'success fee' – and then you may need very deep pockets indeed. We urge clients to discuss fees with us openly and without obfuscation. We are collaboratively trained and work transparently.

Sad Fact #5

The 'other side' may appeal any decision the Court makes. Should this happen, clients may find themselves in the position wherein those with the deepest pockets will try to stare down those who are weaker financially or lack the energy to fight on. To counter this, we develop clear client plans from the start and pursue them always with an eye to the realities – and frailties - of human nature.

Consider alternatives:

1. **Try never** upsetting someone in a relationship or in business (very hard to do!).
2. **Either concede** to the person who sues ... and settle at a financial and reputational cost; **OR**
3. **Save time and money** by getting each party to abide by the principles of Collaborative Law, which is a dispute resolution process in which the parties and their lawyers enter into a contract to resolve a dispute without resorting to litigation.

Conclusion:

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Be aware that you do have options and we urge that, should you or a family member need to go to Court, you let us explain them to you. So, before you commit to a course of action that could be extremely expensive, stressful and damaging, give us a call. You'll be glad you did.

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