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**Avoiding Costs:** A Guide to  
Engaging the Right Estate Lawyer

# AVOIDING COSTS: A GUIDE TO ENGAGING THE RIGHT ESTATE LAWYER

Lawyers have the unenviable association of cost and expense – and in some cases this is rightly so, but some reservations should be made. Seeking the advice and consultation of a legal professional can often be much less painful than one would expect – in fact, it has become commonplace in Australia (and much of the Common Law world) for lawyers to offer free initial consultations to prospective clients. If these consultations continue, and advice on claims is requested, costs can accrue but depending on whom you consult, these figures may be fairly low in the scale of things.

At Hentys, we understand that the first step is always the hardest. Contesting a will can often be a very emotional process, but we've helped so many of clients just like you. We are committed to the interests of each of our clients, applying our hard work, knowledge and experience to achieve the best possible outcome for you and your family.

**FOR AN OBLIGATION FREE DISCUSSION, CALL US ON 03 8615 4200**

Sympathy where you need it. Success where it counts.

More often than not, when a legal claim or dispute arises, lawyers will push for an 'out-of-court' settlement. This is not necessarily because lawyers are adverse to the hours and difficulty of all-out litigation, but rather that the cost of litigation can often spiral hideously out of control. Within the context of Estate law, this is particularly true.

Readers of Charles Dickens will undoubtedly be aware of the infamous (albeit fictional) case of Jarndyce and Jarndyce – a case that was so time consuming and costly that the accrued legal fees ultimately exhausted the entire value of the Estate itself.

While this may seem like an extreme example of artistic license, this fictional case was actually based on a number of cases in Dickens' day – the most famous being *Jennens v Jennens* which was litigated for an incredible 117 years.

This guide will attempt to prevent the uninitiated from writing their own Dickensian tragedy, and offer a number of questions you can pose to your own Estate professional to ensure you keep costs to an absolute minimum.

## **1. LISTEN TO YOUR ESTATE PROFESSIONAL**

Although this seems like a fairly common-sense piece of advice, Estate disputes are by their very nature, stressful and emotionally charged. All of the Australian States and Territories have adopted clear legislative rules for legal practitioners that require them to provide, amongst other things, impartial and realistic advice to clients on their claims. It is important to bear this in mind when receiving bad news about a claim from your lawyer – he or she is under an obligation to the Courts to provide this advice, regardless of either his or her own self interests, as well as your own. Understanding this basic principle should give you a reasonable idea of whether or not it is cost-effective to press or defend against a claim.

## **2. GET A FEEL FOR THE LAWYER'S PARTICULAR STRATEGY**

Some law firms will pride themselves on their aggressive litigation strategies; others will prefer a more gentle, mediation-based approach. Both of these approaches have their own intrinsic benefits and pitfalls, but choosing which of these would most benefit you depends on a number of factors – this could include the strength of your claim, the resources you have available to press a claim, and how responsive the other side is to an out-of-court settlement. Although each Estate dispute will vary wildly from another, there is no harm in asking your lawyer for an indication as to their strategy's cost and likely outcome. Again, your lawyer is obligated by law to provide an honest and impartial answer to these questions.

### **3. GAUGE THE OTHER SIDE AND DON'T FORGET ABOUT THE ESTATE!**

The simplest way of avoiding considerable legal expense is to gauge how open the other side is to negotiation. Out-of-court settlements are by far the best solution to any Estate dispute, but they do require a degree of compromise by both sides. In the words of an unidentified, but particularly wise legal practitioner, “a good settlement occurs when both parties leave negotiations unhappy”. In most cases, the cost of litigation will be borne out of the Estate itself. An easy trap to fall into is thinking that this fact is a carte blanche for endless and aggressive litigation over relatively minor points. At the end of the day, the point of a will is to facilitate

the distribution of a will-maker’s (‘Testator’s’) Estate, with his or her desires in mind – unless the Testator was a particularly vindictive Estate lawyer, it is very unlikely that he or she intended that their Estate ought to line the pockets of lawyers!

Every dollar spent pursuing and litigating a claim is a dollar taken away from the Estate, and by extension, out of the pockets of friends and families of the Testator. It is extremely important that you keep this in mind when considering or discussing your claim with your Estate professional.

# Hentys | Lawyers

Hentys Lawyers has over 25 years of experience in Will Dispute cases. Our dedicated team of Will Dispute specialists are committed to providing you with outstanding legal service and emotional support during the entire dispute.

At Hentys, we care about our clients. We know that in hiring us, you are putting your trust in our hands to deliver the results that you need.

Our team also has the in-depth understanding of these situations to provide you with further emotional support.

We build a trusting relationship with our clients, that's why we are Victoria's Will Dispute Experts.

**Hentys Lawyers** ABN 88 118 869 793

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