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## LawTalk Blog



# Does the deceased estate pay the costs of an inheritance claim?

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It's a common question in estate litigation - who pays the costs of contesting?

Costs are obviously relevant when a person decides to Contest a Will. A will can be contested where:

1. insufficient provision has been made in the Will for a spouse, domestic partner, child, or other person;
2. if it is alleged that the Will was incorrectly executed or was tampered with;
3. the Will was executed under pressure from others or the testator was incapable of making a Will;
4. or the Will has been incorrectly administered.

Many people who are entitled to challenge a Will are often those who need greater provision from the estate of the deceased.

Often but not always, such claimants are reliant on social security payments or other welfare benefits for income. The ordinary rule on costs for estate claims, being that the estate bears all legal costs, has the effect of not intimidating such claimants by the threat of complete financial ruin as a result of achieving a modest, or indeed, sometimes unsuccessful claim.

Legal costs in family provision cases are at the discretion of the judge however if an order for provision is made for a claimant, then usually the claimant's costs will be paid out of the estate.

The cost rule means that in many circumstances, Andersons Solicitors are able to represent unfunded claimants who otherwise may never have the chance of having their claims put before the Court.

If however the claimant's case is rejected and no order is made in his or her favour he or she may be ordered to pay the costs of the executor defending the proceedings.

In the recent South Australian Supreme Court decision of The Honourable Chief Justice Kourakis in [Fielder v Burgess \[2014\] SASC 98](#) the Chief Justice calls for reform to the probate cost rules for who pays for contested estates. The Chief Justice expresses concern at paragraphs 62 about:

*"...private parties advancing competing claims to the testator's bounty for their private financial benefit".*

As such we may be seeing legislative changes in the near future about who should bear the cost of Deceased Estate Litigation, which is often costly and depletes the estate for the testator's intended beneficiaries. Watch this space.

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*Please note, this Blog is posted in Adelaide, South Australia by Andersons Solicitors. It relates to South Australian legislation. Andersons Solicitors is a medium sized law firm servicing metropolitan Adelaide and regional South Australia across all areas of law for individuals and businesses.*