

Disclaiming an inheritance left to you in a Will

Author: Chris Alfonso
Email: chris@ealawyers.com.au
Date: Sunday December 10, 2023

You may think that it is strange to consider not accepting a gift, whether it is under the terms of a Will or, where there is no Will, on an intestacy. But there can be very good reasons to disclaim an inheritance. In this blog, we look at some of the reasons people may choose to disclaim an inheritance, how to go about it and what happens to the share of inheritance disclaimed.

Disclaiming an inheritance because it gift is considered a burden

A clear and common example for looking to disclaim or reject an inheritance would be that the gift is something that has deteriorated or needs a great deal of work done on it to make it of any value. It might be a small property in a remote country town which has become dilapidated and has accrued or is accruing expenses such as council rates.

Or it might be an old but otherwise not valuable motor vehicle which is not operating and needs to be fixed to obtain registration.

Or maybe a business that would need substantial time and commitment to operate and then be able to sell.

Or the gift might be of something (real or personal estate) in another country, such as the UK or USA, where inheritance taxes apply (we do not have an inheritance tax in Australia).

No doubt there could be many more examples of a gift being so burdensome that the beneficiary does not wish to inherit it.

Disclaiming an inheritance because it will affect a pension

This is often an issue raised as the beneficiary may be receiving a pension, and although the gift may be of some value, the beneficiary would prefer not to receive it as it will mean their pension will be reduced.

Again, that may seem strange to not accept a valuable gift, including money, but sometimes an elderly person would prefer to rely on their pension rather than have to manage an inheritance.

But there are issues with disclaiming a gift in those circumstances. Centrelink may still attribute the gift to the pensioner and adjust the amount of pension even though it has been disclaimed, as the intended recipient would have received the gift if they had not taken steps to refuse or disclaim the gift. Financial advice should be sought before disclaiming a gift when on a pension.

Acceptance of an inheritance could create family problems

It may be that the gift could create family conflict if it was accepted. The beneficiary of the gift may be estranged from the family member who provided the gift so, possibly creating issues with other family members.

How is an inheritance disclaimed?

A gift cannot be disclaimed before the Will maker has died. If the Will maker is still living, then they could choose to amend their Will if they have capacity to do so.

For a disclaiming of inheritance to be effective, the disclaimer must be made promptly and should be communicated in writing to the executor or administrator of the Will or to the administrator of an intestate estate.

Notably, a gift cannot be disclaimed if it has already been accepted or if other beneficiaries have already relied upon the disclaimer.

There is no set form for communication with the executor or administrator, but it needs to be very clear and unambiguous. For evidentiary reasons, it should ideally be in writing. In some instances, it may be appropriate to enter into a Deed of Family Arrangement to clearly document what has been decided and any consequential issues with that decision.

CALL A DECEASED ESTATES LAWYER FOR ADVICE: 02 9997 2111

What happens with the share of an inheritance that has been disclaimed?

If a gift is disclaimed under a Will, then the beneficiary who disclaimed the gift is treated as though they predeceased the Will maker. The terms of the Will may outline how their gift is to be otherwise distributed or who else is entitled to receive the gift.

If the gift is from an intestate estate (i.e., an estate where there was no Will), then consideration would need to be had to the *Succession Act* to determine who may be entitled to receive the disclaimed gift based on the relevant intestacy rules.

Get help from a deceased estates lawyer

Some assistance from a lawyer should be considered not only to ensure that the disclaimer is effective but also to identify if there may be adverse consequences of disclaiming that may affect the decision.

For example, although a pensioner may wish to disclaim a gift because of a concern that it will affect their pension, Centrelink may still attribute the gift to the pensioner even though it has been disclaimed. So, it may be that financial advice on the impact should also be obtained.

And if the disclaimer is of, say, an interest in a business, there may be flow on issues with staff and finance arrangements which could influence a decision to disclaim.

Our deceased estates lawyers will be able to advise you how to go about disclaiming an inheritance and warn you of any unintended or unexpected consequences that may flow from that.

Contacting E&A Lawyers

For more information or to arrange a consultation with a lawyer, you can call or email us.

02 9997 2111

info@ealawyers.com.au

This article is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact E&A Lawyers.