

HAVE YOU BEEN LEFT OUT OF A WILL?



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HAVE YOU BEEN LEFT OUT OF A WILL?

If you have been left out of a will or you did not receive a fair share then you may be able to contest the will under the Family Provision Act 1982. Alternatively, you should read our information concerning "Is that Will valid?".

As a general principle a person is free to dispose of his or her property as they see fit upon their death. But this right is subject to the court being able to order provision out of the estate in favour of an eligible person if the court finds that the deceased ought to have made such provision for the maintenance, education or advancement in life of the eligible person.

Firstly, we must ascertain whether or not you may eligible to claim on the estate. If not, you cannot proceed to make a claim under the Family Provision Act.

Eligible Persons

Eligible persons include the following:-

1. The spouse at the time of death
2. A person with whom the deceased was living in a domestic relationship at the time of death. This includes a de-facto relationship or a close personal relationship between two (2) adult persons whether or not related by family, who are living together, one (1) or each of whom provides the other with domestic support and personal care.
3. A child of the deceased.
4. A child of a domestic relationship to which the deceased was party to at the time of death.
5. A former spouse.
6. A grandchild who was at any time wholly or partially dependent upon the deceased.
7. A person who was at any time wholly or partially dependent upon the deceased and was at any time a member of a household of which the deceased was a member.

Legal advice may be required to ascertain whether you fit within the legal definition of one of these categories of eligible persons. Additional hurdles face claimants in categories 5, 6 and 7.

How does the Court deal with these Claims?

The High Court has set out a two (2) step process:-

1. Firstly, decide whether the deceased has made appropriate provision for the maintenance, education or advancement in life of the eligible person.
2. Secondly, if the deceased has failed to make such provision exercise the discretion to determine whether and what appropriate provisions should be made.

The Court has to consider what the deceased ought to have done. The Court looks at the applicant's needs and the deceased's ability to meet that need. The Court must consider the size of the estate, the nature of the relationship between the eligible persons and the deceased, and the competing claims by others upon the deceased's bounty.

The Court's role is not to rewrite the will but only to disturb the will to the extent necessary to provide for the needs of a successful applicant.

Time Limit

An application for provision must be made within eighteen (18) months of the deceased's death otherwise you could lose your right to claim. The Court may allow a claim out of time on sufficient cause being shown.

Please call Peter Baltins for further advice.