

Can I contest a will if I feel I have not been adequately provided for?

Family Provision Claims under the Succession Act

Sometimes when a family member passes away some of the deceased's relatives or associates believe that they have not been adequately provided for in the deceased's will.

These persons are often current or former spouses, de facto spouses, children or dependent step children. Sometimes grandchildren also may make a claim as well as other persons who have, at some time, been at least partially financially dependant on the deceased and have been a member of the deceased's household. A person who was living with the deceased in a close personal relationship at the time of death of the deceased may also bring a claim. Frequently the deceased is viewed as having had a moral obligation to make some provision for that person on their death.

In these circumstances it may be possible to make a claim under the Succession Act 2006 (NSW). Proceedings for an order under the Succession Act must be commenced within 12 months after the death of the deceased person. For that reason if there is the possibility that a claim may be made on an estate, executors should delay distribution of an estate until the statutory period has expired. The court has the power to extend the time for commencement of proceedings where sufficient cause is shown for the application not having been made within the 12 month period.

In order for a court to alter the deceased's will the court must be satisfied that the deceased failed to make adequate provision for the "proper maintenance, education and advancement in life" of the person making the application.

Whether the deceased made "adequate" or "proper" provision depends on all the circumstances of the case.

For this reason courts consider a wide range of factors such as: the wealth of the deceased, the number and needs of other dependants and beneficiaries, the age and financial needs of the applicant and the relationship between the applicant and the deceased.

Where a court is satisfied that the deceased failed to make adequate and proper provision for someone, the court then decides what, if any, provision should be made for the applicant. In making this second determination, courts again consider a wide range of factors.

If you were left out of the Will or if you believe you were not properly provided for, you may have a claim under the Succession Act 1982 (NSW).

We have acted in many cases involving disputes between beneficiaries and claims for greater provision from an estate. Where litigation is absolutely necessary, our experienced team will swing into action to help secure you the best possible outcome, as quickly as possible. We understand the pressures you will feel so will support you in any way we can.

Going to court, however, is not always the only solution, or necessarily the best. We are well-versed in alternate dispute resolution techniques, and will advise you of the best course of action for your situation.

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