



Unfair Treatment in a Will and Family Provision Claims

Some of the most commonly asked questions about Unfair Treatment in a Will and Family Provision Claims are discussed on this page.

1. Who is entitled to make a Family Provision claim?

You must be what the Succession Act calls an 'eligible person' before you are able to make a Family Provision claim.

Eligible people can include;

- a spouse
- a de facto spouse
- a child
- a grandchild
- an ex-spouse or any person wholly or partly dependent on the deceased at any time, if they were a member of the deceased's household at any time

2. When does a Family Provision claim need to be made?

A claimant has 12 months from the date of the death of the deceased to make a Family Provision claim. In some rare circumstances, the Court may agree to extend this 12 month time limit.

Therefore it is important to seek legal advice as quickly as possible if you are considering making a Family Provision claim.

3. What does a claimant need to prove?

A claimant would need to demonstrate to the Court that they once depended on the deceased and show a 'need' for a share of the estate compared to the claims of other relatives or beneficiaries.

The Court will consider that someone 'needs' a share of an estate if it is necessary for the claimant's reasonable maintenance, education or advancement in life. If a claimant cannot show that they require provision for these things, then a claim could fail.

4. What will a claimant get if they are successful?

The Court has an absolute discretion to decide on what a claimant will receive from an estate.



What is available from an estate of course includes whatever property was left after the date of death. It is possible for the Court to make orders in respect of property that has already been distributed. In fact the Court can go back as far as property that was transferred by the deceased 3 years before their death and make that property available as well, despite it now being owned by somebody else.

This is a discretionary process, which means the Court will decide the level of need of a claimant, and if there is such need, the amount of the distribution. Besides considering the size of the estate, the Court will take different factors into consideration, such as;

- any financial or non-financial contribution by a claimant
- the character and conduct of a claimant before and after the date of death
- the circumstances existing before and after the date of death

5. Who pays the costs of a Family Provisions Claim?

The Court has extensive powers which allow the making of costs orders, in particular in relation to smaller estates, which are those valued at less than \$750,000.00.

The Court has issued a practice note which applies to all applications under the Family Provision section of the Succession Act. This practice note aims to resolve the Family Provision Claims faster, more easily and with less expense. The Court has, in essence determined the form of the application, the relevant issues which should be address in the Affidavits to be submitted by both parties and a timetable for the conduct of the proceedings.

The Succession Act also now provides that all Family Provision application matters must be referred to mediation before they go to Court hearing.

If you would like further information, or require assistance, please contact us on (02) 4731 5899 or send us an email by clicking on the 'Contact Us' page on our website.