

A Conversation About Estate Disputes: Part 3 – Family Provision Claims

The third article in our Estate Disputes series focuses on family provision claims; who can make them and what factors will be considered by the Court.

A claim for further provision is another way to dispute an estate. In short, it is an application to seek a share or larger share from a deceased person's estate than what the person has been provided for under the terms of the deceased's Will.

Where an individual has died and an eligible person under the Inheritance (Family Provision) Act 1972 (SA), has been "left without adequate provision for his proper maintenance, education or advancement in life" (noting the deceased must have resided in South Australia and had assets within the state), an application can be made and the Supreme Court of South Australia may, in its discretion, order such provision as it thinks fit to be made out of the deceased person's estate.

Eligibility requirements for making a claim for inadequate provision:

A family provision claim can only be made by an eligible person – this includes any of the following:

- The spouse of the deceased;
- A person who has been divorced from the deceased;
- A 'domestic partner' of the deceased;
- A child or grandchild of the deceased;
- A child of the deceased's spouse or domestic partner who was maintained wholly, partly or who was legally entitled to be maintained wholly or partly by the deceased person immediately before their death;
- A parent of the deceased who cared for or contributed to the maintenance of the deceased during their lifetime; or
- A brother or sister of the deceased who cared for or contributed to the maintenance of the deceased during their lifetime.

The application must be made within 6 months unless an application for extension of time is successfully brought.

What Factors Will the Court Take into Consideration?

Being considered an "eligible person" is only the first hurdle. A Court will determine Family Provision Claims on a case-by-case basis. Some of the factors a Court will consider when determining if a person has been left without adequate maintenance, education and advancement in life are:

General Considerations

- The nature and duration of the relationship between the applicant and the deceased;
- The intentions of the deceased person, as evident in their Will or any other statement made by the deceased person that may qualify as a statement, including any provision that has been made for the applicant during the deceased's lifetime or from their estate;
- The nature and extent of:
    - Any obligation or responsibilities owed by the deceased to the applicant; and
    - The deceased's estate and any liabilities of the estate.

Considerations Specific to the Applicant

- The age, character and conduct of the applicant, before and after the deceased's death;
- The financial circumstances of the applicant, including their current and future financial needs; and
- The applicant's physical and mental health, including any intellectual or mental disabilities.

How can Andersons help?

Andersons Solicitors has an experienced **Wills and Estates team** to advise you should you wish to make a Family Provision Claim, or if you are defending a claim made against an estate to which you are beneficiary. Please **contact our offices** to make an appointment or call to discuss your legal needs.