A Conversation About Estate Disputes: Part 5 – Is There a Requirement For Minimum Provision For a Spouse From an Estate?

Under the *Inheritance (Family Provision) Act 1972 SA* ("IFPA"), the Court is required to determine if the Will has left one of the family members (the claimant) without adequate provision for his or her proper maintenance, education or advancement in life.

This is a question to be determined objectively by the Court involving the exercise of value judgment by looking into all relevant circumstances including:

- the length of the relationship,
- the nature of the relationship,

- the size of the estate
- the contribution to the estate,
- the financial position of the claimant,
- the needs of the claimant and
- the needs of the competing parties.

Spouses are eligible claimants under the IFPA. Whilst there is no such requirement of a "minimum provision" for a spouse, the Court will consider what is required to maintain the lifestyle and living standard that the claimant spouse is accustomed to.

Carter V Brine [2015] SASC 204

In the case of *Carter v Brine*, Justice Blue considered an IFPA claim by a de-facto partner. Professor Brine died in December 2012. He left Ms Carter, his de facto partner, with a life interest in his principle residence in Australia, his interest in a French townhouse and an English apartment. He left the residue of his estate to his sons and grandchildren from an earlier relationship. The residuary estate, excluding the deceased's interest in the French townhouse and the English apartment, consists of assets valued at over $4.5M.

Professor Brine and Ms Carter were together for over 25 years, for which they cohabitated for over 15 years. Throughout their relationship, they had their own properties, investments and bank accounts.

Professor Brine and Ms Carter owned the French townhouse as tenants in common in equal shares. They also owned the English apartment in the ratio 60:40. Ms Carter claimed a proprietary trust in respect of Professor Brine's ownership in his principal place of residence ("PPR"), the French townhouse and the English apartment as she contributed more than him to renovations and maintenance of these properties. Ms Carter was found to be entitled to 50% beneficial claim in the PPR, but all of her other equitable claims failed.

In determining Ms Carter's IFPA claim, the Court considered a spouse's relative needs by assessing the lifestyle and standard of living that the claimant had become accustomed to, and not in absolute terms of what she needed to survive, or to live comfortably. The Court adopted the principles in Bowyer v Wood which found that the words "adequate" and "proper" are always relative, and that "there are no fixed standards and the court is left to form opinions upon the basis of its own general knowledge and experience of the current social conditions and standards".

Ms Carter had assets in her own name of approximately $1.5M. She was 78 years old and in good health. She had two adult children, both of whom were financially independent. Ms Carter received Professor Brine's entitlements to the UniSuper Indexed Pension payments and Flexi Pension benefits ($500,000), Ms Carter was found to have effectively "inherited" all of his income and retained her own independent income. She is also entitled to live for her lifetime in Professor Brine's PPR, in which case she has more than sufficient assets to meet the expenses of a life tenant and to live comfortably. Each of Professor Brine's three sons were professionals, in their 50s, and had assets of approximately $1M each.

The Court ruled that given the circumstances and in exercising the overall evaluative judgment, Ms Carter was not left without adequate provision and her IFPA claim failed.

How can Andersons help?

If you are needing advice on a claim against an estate, whether as a claimant or a beneficiary, contact today's author Lynn Pham or anyone in our specialist **Wills and Estates Lawyers.**