

29 November 2013

The Succession Act 1981 allows people who meet certain criteria to make an application to the Supreme Court of Queensland if adequate provision from a deceased estate has not been made for their maintenance and support. This applies irrespective of whether the deceased made a valid will before they passed away.

Timeframe for making an application

An applicant must make a claim within 9 months of the date of death. There is some scope for a court to extend this time frame, however the right to make an application is not ongoing. It is therefore important to seek legal advice as soon as possible.

The application

There are two parts to a family provision application: -

1. Eligibility. An applicant may be a spouse, child, step-child or anyone wholly or substantially dependent upon the deceased for maintenance and support at the time of death. Further eligibility criteria apply for some potential applicants, and applicants must show that continued support is warranted; and
2. Just and adequate provision from the deceased estate. This is at the court's discretion and takes into account all of the relevant circumstances, such as the applicant's need and the size of the estate, to name a few.

Family provision applications depend on the particular facts and circumstances of each case. Applicants may be eligible to apply, but fail to establish why ongoing support is needed. Disentitling behaviour of the applicant may also make it reasonable for a court to refuse provision.

When making a will

The possibility of a family provision application should also be considered when making a will, as there are ways to minimise the risk of an application. Applications can be costly, and occur at an emotional time for your executors and beneficiaries.

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If you feel that proper provision has not been made for you from a deceased estate, or if you have any questions regarding family provision applications, please contact our team to discuss your options:

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