

Protect Assets with Estate Plans

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Effective estate planning protects assets and minimises tax liabilities. An otherwise effective estate plan may be compromised, however, by challenges to the estate (for example, a family provision application) with the unwelcome result that assets are dealt with in a way inconsistent with the intentions of the deceased.

A family provision application involves a person making an application to the Court for “adequate provision” from the estate of a deceased person for his or her proper maintenance and support. The applicant either seeks a share of the estate (where no provision has been made) or a larger share of the estate.

Notice of an intention to make a family provision application must be given within six (6) months of the date of the death of the deceased person, and the application must be filed in the Court within nine (9) months. The timeframes for the making of a family provision application are strict and must be complied with.

In Queensland, a spouse, child (including a step-child) or a “dependent” are eligible to make a family provision application. A person is a “dependent” if they are wholly or substantially dependent upon the deceased for maintenance and support at the time of death and are a:

- parent of the deceased person;
- the parent of a surviving child under the age of eighteen (18) years of the deceased person; or
- a person under the age of eighteen (18) years.

Determining family provision applications involves a two-stage process. Firstly, the Court must consider whether the deceased person has failed to make adequate provision for the proper maintenance and support of the applicant. Secondly, if the Court is satisfied that adequate provision has not been made, the Court must determine what provision should be made for the applicant. In determining what provision should be made for the applicant (if any), the Court will look at all the circumstances of the case including the size and nature of the deceased person’s estate, the applicant’s financial position and the relationship between the applicant and the deceased person, to name a few.

The possibility of a family provision application should be considered when making a Will and steps taken to minimise the risk of an application.

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