



legal chat

with Solicitor

MARK TOBIN

DECEASED ESTATE CLAIMS

We are often asked to advise about how and who can make a claim on a deceased persons Estate. A claim against an Estate is usually made by a spouse or family member having been either not mentioned in a Will at all or if mentioned having insufficient provision made for them by the deceased. While the common law talks of a deceased person having testamentary freedom, that is the right to leave their estate to whoever they might want or choose, essentially the law regards a deceased person to still have an obligation to consider their own family and certain other people, even after they have passed away. It is expected this is done in their Will and the absence of such consideration could see an aggrieved family member entitled to make a claim. While there can be claims based on undue influence, incapacity or based on some promise made by the deceased many are for what is known as family provisions. Claims of this nature were previously dealt with by the Family Provisions Act but since 2009 the Succession Act has taken over. If you were a spouse or defacto spouse, a former spouse, a child, a grandchild or a former member of the household, or you were in a close personal relationship with the deceased you are regarded as being an eligible person to make a claim. Other claimants may be considered dependent on the particular circumstances. You would need to show that the deceased made no or inadequate provision for you either during their lifetime or out of their estate. Claims of this nature are described as essentially a 'needs' based claim, so if you have

been well provided for in the past you may find it harder to convince the court of your claim. Circumstances such as the size of the Estate, your relationship to the deceased and even your character and conduct around the time of the death are taken into account. The chances of settling this kind of claim before going to Court is often good as Executors are inclined to settle disputes rather than run up unnecessary court costs as in most cases the Estate would be required to pay those costs. Mediation of claims prior to the matters proceeding to court is now mandatory and many settle at this time to avoid the vagaries of the Court system. Under the Succession Act, claims must be made within 12 months.

If you are wondering if you should make a claim, give Johnston Tobin Solicitors a call.



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