

Will Disputes Check List

Bringing a Claim against a Deceased Estate

If you have been left out of a will, or are disappointed with how little you have received from a will, you may have legal rights to bring a claim. This handy checklist will help identify a potential claim.

Who Can Claim?

A range of relatives of the person who has died (“the deceased”) can bring a claim. They include:

- the surviving spouse (husband or wife) or de facto or domestic partner (including same-sex partner)
- an ex-husband or ex-wife
- children, adopted children and children of domestic and de facto relationships
- a grandchild who was financially dependent at some point

The only non-relative who can potentially claim is a person who was a member of the household of the deceased, and who was financially dependent on them while living with them.

Any of the above categories of people have a basis to bring a claim if they show that they have a need of provision, and that is reasonable in the context of the needs of the other beneficiaries that they receive a (greater) share of the estate.

What Can I Ask for?

The court can amend the provisions of the will at its absolute discretion. A claimant might receive a cash payment, part or all of a house or apartment, some shares, or any other allocation from the estate that is sensible in the circumstances.

What is the Process?

We write to the executor to negotiate an out of court settlement. If this is not successful, we commence court proceedings, but then try to settle the matter through mediation. If the parties cannot agree on a settlement, the Supreme Court hears the case and decides what should happen.

Is there a Time Limit?

Yes, it is very important to commence a claim within 12 months of death. Sometimes the court will allow a late application if a sufficient explanation can be provided.

How Much Will it Cost?

If we can settle the matter without having to start court action, the costs are usually between \$4,000 and \$8,000. We can usually receive payment from the settlement monies. If the matter goes to court, the cost can be a lot more than this, the amount depending on how complicated the family history is, how large the estate is, how long the dispute takes to resolve, and whether we have to run the matter to hearing. Once we have met with you, we can give you an estimate of the likely cost of the various stages, and work out a plan for how your costs will be covered, for example by litigation funding, or payment at the end out of the amount you are awarded.

How Do I Get Started?

The best thing to do is to meet with a lawyer from our litigation team to get some initial advice on your situation. We can provide an initial assessment of the strength of your case, and give you help with trying to negotiate a lump sum payment.

For more information contact a member from our Litigation Team

Level 8, 10 Help Street
Chatswood NSW 2067
T: + 61 2 9411 4466
F: + 61 2 9412 3657
email@avlawyers.com.au



Atkinson Vinden
Lawyers

