

Making an Inheritance Act Claim to Challenge a Will or the Rules of Intestacy

If you feel you have been overlooked as a beneficiary in a will or, if where there is no will, the rules of intestacy do not include you as beneficiary, you might have a claim under the Inheritance (Provision for Family and Dependents) Act 1975.

First Step - Are You Entitled to Make a Claim?

In order to bring a claim you must satisfy the Court that you are entitled to make the claim. The Act states that following must apply:

- (1) The deceased must have been living in England and Wales at the time of their death.
- (2) You, as the applicant, must be one of the following:
 - a. the spouse or civil partner of the deceased;
 - b. the former spouse or former civil partner of the deceased (as long as the deceased has not re-married or formed another civil partnership);
 - c. a child of the deceased;
 - d. where there is a marriage or civil partnership, a person who was treated by the deceased as a child of the family;
 - e. immediately before the death of the deceased you were being maintained, either wholly or partly, by the deceased.
 - f. if cohabiting with the deceased, then you must have been living with the deceased for a period of at least two years.
- (3) The application must be made within six months of the grant of probate or letters of administration

Second Step – Do the Will or Rules of Intestacy already make Reasonable Financial Provision for You?

The Court has to consider whether "reasonable financial provision" has already been made for you. The extent and meaning of "reasonable financial provision" has to be decided by the Court and is different according to your status.

If you are the spouse of the deceased, the Court will look at what would be the appropriate financial provision for a husband or wife to receive. In the case of any other applicant "reasonable financial provision" means such financial provision as it would be reasonable for them to receive for their maintenance. The difference in practical terms is that if you are not the spouse/civil partner of the deceased your claim will be more restricted, and that what is "reasonable"

depends very much on the individual circumstances of the applicant's case.

Third Step - What will the Court look at when deciding whether to make an Order?

The Court will look at the following matters as set out in section 3(1) of the 1975 Act:

- a. the financial resources and financial needs of the applicant;
- b. the financial resources and financial needs of any other applicant;
- c. the financial resources and financial needs of any beneficiary of the estate;
- d. any obligations and responsibilities which the deceased had towards any applicant or any beneficiary;
- e. the size and nature of the deceased's estate;
- f. any physical or mental disability of any applicant or any beneficiary;
- g. any other matter, including the conduct of the applicant or any other person, which in the circumstances of the case the court may consider relevant.

In addition, when looking at factors (a) to (f) the Court will also consider:

- a. the age of the applicant and the length of the period during which the applicant lived as the husband or wife of the deceased and in the same household as the deceased;
- b. the contribution made by the applicant to the welfare of the family of the deceased, including any contribution made by looking after the home or caring for the family.

This information will usually be set out in a comprehensive witness statement which your solicitor will draft for you. It is therefore important that you gather together all the details of your financial dependence and your need for provision. The Court, in deciding whether to make an order to redistribute the assets of the deceased's estate, has to finely balance all the above factors, and so it is important that all the relevant information is presented to the Court.

The Types of Orders the Court can Make

Section 2 of the Act enables the Court to make any one or more of the following orders:-

- a periodical payments or "maintenance" order, for regular payments of a specific sum;
- a lump sum order – or "one off" payment;
- a transfer or sale of property order;
- an order redistributing or acquiring property, for example, for a trust for the applicant;
- an order varying any pre-nuptial or post-nuptial settlement (including such a settlement made by will) where the deceased was married.

What will it cost me and how will I pay?

If the matter settles before a final hearing then the costs will usually be significantly lower than if the matter proceeds to a hearing where the Court decides the final outcome.

If you are successful then the Court will usually order your costs to be paid from the estate or by the other "losing" party. However, it cannot be guaranteed that the estate will be ordered to pay all the costs, and so it is important to discuss your funding options with your solicitor. The options include "no win, no fee", Legal Aid (public funding) as well as the more conventional private client basis, where your solicitor will issue regular bills for payment as the case proceeds.

How we can help

If you need advice about whether you are entitled to bring a claim against a deceased's estate, then please contact a member of our Wills and Probate team.

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