



Family Provision Applications

by Kylie Costigan

Who can make a claim against my estate when I die?

There are certain people who the law recognises as being entitled to receive 'proper and adequate' provision from your estate and if they do not, or believe they have not received such provision, then they can claim against your estate (that is, challenge the terms of your Will and ask to receive something, or more, when you die). These types of applications are called 'family provision applications'.

In Queensland those people who are eligible claimants against your estate include

- your spouse (including de facto spouse of two years or more and former spouse receiving or entitled to receive maintenance at your death);
- your children (including step-children and children of a de facto partner);
- any other person who is financially dependent upon you (and who is your parent, the parent of your child who is under 18 years or a child under 18 years).



What are the chances of someone succeeding against my estate?

The first thing an applicant must prove is that they are an eligible applicant. Then they must prove that you have not adequately provided for them in your Will, after which it must be determined what adequate provision should be.

Some of the relevant factors when considering the chances of a family provision application succeeding are:

- the applicant's needs (financial, medical or otherwise) compared to the needs of the people you listed as beneficiaries in your Will;
- the size of your estate (in general terms, the larger the estate the greater the chance of provision being made for the applicant);
- the relationship between you and the applicant, including contributions made by them to building up your estate or other support given to you.

So does what I say in my Will mean nothing?

Do not be dismayed. Unless someone is successful in making a claim against your estate, the terms of your Will must be carried out by your executors.

Whether a claim is successful or not depends on whether you have made adequate provision for the people that the law says you should have considered when preparing your Will. It is important to consider the potential of a claim against your estate because the financial cost of a claim to your estate can be significant (legal fees of all parties often are paid for by your estate). Further, estate claims can be drawn out, holding up the distribution of the estate, and are emotionally draining and destructive.

So what do I do?

It is important that you consider the potential claims against your estate when you prepare a Will. At Estate First, we will discuss with you, as part of the [estate planning process](#), who potential claimants are, and options around including/excluding them, with a view to minimizing the risk of claims later on.

If you are concerned about potential claims against your estate or whether someone might be an eligible applicant, then it is important to see us to talk through the options.

This information is general in nature and should not be acted upon without first obtaining legal advice on your particular situation. To find out more or to make an appointment, phone us on 1300 132 567 or email us info@estatefirst.com.au



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