

Wills, Trusts and Probate Briefings

Claims against estates on death

The law

If a person leaves specified relatives, dependents, or other people for whom he had taken responsibility up to his death, out of his will, they can go to court and claim 'reasonable financial provision' from his estate after his death. They can also do so if he has not made a will, and the rules that govern how estates are divided up in those circumstances leave them without reasonable financial provision.

Who can claim

The categories of people who can make a claim are:

- his spouse or civil partner;
- his former spouse or civil partner, provided they have not remarried or registered a new civil partnership, and provided no court order was made at the time of their split that specifically precludes them from bringing such a claim;
- any other person with whom he was co-habiting continuously for the two years immediately preceding his death, as his spouse or civil partner;
- his children (which includes illegitimate, adopted and adult children, and children conceived but not yet born at the time of his death);
- any person who he treated as a child of the family in relation to any marriage or civil partnership of his (eg a former spouse's child from a former relationship);
- any other person whom he 'maintained', ie he was making a substantial contribution towards their reasonable needs (whether in cash or with something else of value) up to his death, on the basis that he had assumed responsibility for them. The court will look at the type, value and purpose of the payments, and how long he had been making them.

He must have been domiciled in England & Wales, ie he considered England & Wales to be his permanent home.

What the court can order

If the court decides to make reasonable financial provision, it can order

- regular payments from the estate for a period of time;
- a lump sum payment;
- a transfer of property from the estate;
- setting up of a trust, eg to provide a home for the spouse to live in for life; or
- variation of a post-marriage settlement.

The criteria

Spouses or civil partners do not have to be in financial need to make a claim. The court will take into account:

- their age;
- whether they are responsible for minor children, and its effect on their earning capacity and ability to retrain;
- their contribution to the family;
- the length of the relationship, and any separation; and
- what they would have received if they had, instead of the death, divorced each other or dissolved their civil partnership.

However, there are special rules if there has been a judicial separation or separation order, and if there has been an application to the court for financial relief in, eg divorce proceedings between them. Take advice.

For former spouses and civil partners, the court can take account of age, children and contribution to the family. The circumstances of the divorce or dissolution may also be relevant, eg how long ago they split up, if they agreed a clean break settlement, and any evidence that they may have misrepresented their assets or income.

Other applicants will only get financial provision if they are in need. There are statutory guidelines that the court takes into account. These include:

- the applicant's present and future financial needs and resources;
- the present and future financial needs and resources of any beneficiary of the estate;
- the deceased's obligations and responsibilities towards the applicant, and towards any beneficiary under his will;
- the size and nature of the deceased's estate;
- any physical or mental disability of any applicant or beneficiary; and
- any other matter (including the conduct of the applicant or any other person).

For example, an adult child cannot simply claim that, as a child, he expected to inherit. He would have to show that he was in financial need, and special circumstances, eg that the deceased made promises to him or behaved towards him in a way that implied he felt some additional obligation towards him. Even then, it is clear that, the smaller the estate relative to the competing claims, the less likely that his claim will succeed. And if, for example, the deceased has explained in his will, or in a separate note, why he has left nothing to the applicant, this can be taken into account - although the court is not bound to follow his wishes.

Time limits

When a person dies, the people named in his will to deal with his estate (his 'executors') or, if he died without making a will, the people that the law says are entitled to deal with his estate (his 'administrators') must apply to the court for an official document that proves they are his executors or administrators. These are called a 'grant of probate' and 'letters of administration' respectively.

A claim for reasonable financial provision must be made within six months after probate or letters of administration have been issued, although the court can extend this period in certain circumstances, eg if the applicant has not made an earlier claim because he has been negotiating with the executors or administrators.

Other challenges

Other ways to challenge a will include:

- if there has been 'undue influence' on the deceased at the time he made his will;
- mental incapacity of the deceased; and
- lack of the necessary legal formalities, eg as to signature and witnessing of the will.