

## **INHERITANCE CLAIMS**

If a person either dies without making a will or has made a will that does not make proper financial provision for their relatives or dependents, the court may be able to intervene and order that the deceased person's estate be divided up more fairly. 'Estate' is simply the legal term for any property, money, and belongings of the deceased person.

The Inheritance (Provision for Family and Dependents) Act 1975 sets out who can apply for such an order and tells the court what sort of things it has to consider when deciding whether or not to make an order.

### **Who can make a claim?**

The spouse or civil partner of the deceased person.

A former spouse or civil partner of the deceased person (but only if they have not remarried or formed a new civil partnership).

Someone with whom the deceased lived for at least 2 years before his/her death as if they were married or in a civil partnership.

A child of the deceased person.

Someone whom the deceased person treated as a child of his/her marriage or civil partnership.

Someone whom the deceased person was financially supporting immediately before his/her death.

### **When must they make a claim?**

Claims must be made within 6 months of the grant of probate to the deceased person's personal representatives. These are the people whom the deceased person has appointed to administer his/her estate after their death. Before they can do this, the personal representatives must ask the High Court to authorise them ('to grant them probate') to carry out the instructions in the deceased person's will.

It is sometimes possible to persuade the court to allow someone to bring a claim against the deceased person's estate after the 6 months is up but there would need to be exceptional circumstances before the court would consider doing this. The court does not do this very often.

Therefore if you think that you might have a claim, you should take legal advice as soon as possible after the deceased person's death. If you do not do so, it may mean that you lose your one chance to make a claim.

### **What are the grounds for making a claim?**

There is only one ground for making a claim and that is that either the deceased person's will or, if they did not

make a will, the intestacy rules do not make reasonable financial provision for the person bringing the claim.

If the person bringing the claim is the deceased person's spouse or civil partner, 'reasonable financial provision' means such provision as in all the circumstances of the case it would be reasonable for a husband, wife, or civil partner to receive.

When it decides this, the court must consider how it might have divided up the deceased person's estate as part of divorce proceedings but it can make a bigger or smaller award than that.

The fact that the spouse or civil partner does not need the money in order to maintain him/herself is irrelevant when the court is considering what to do.

With any other person who is making a claim, 'reasonable financial provision' means such provision as it would be reasonable in all the circumstances of the case for that person to receive for his/her maintenance.

This means that the court will not make an order just because the judge thinks the deceased person's will was unfair. The person making the claim must show that he/she had a reasonable expectation that the deceased person would meet his/her living expenses. This means that the child of the deceased person who was financially independent of the deceased person will probably find it very difficult to bring a claim.

### **What will the court consider when deciding what to do?**

If, but only if, the court decides that reasonable financial provision was not made for the person making the claim, it will consider these factors in deciding what to do:

- The financial resources and financial needs which the person making the claim has or is likely to have in the foreseeable future;
- The financial resources and financial needs which any other person asking for an order under the Inheritance Act from the estate of the deceased has or is likely to have in the foreseeable future;
- The financial resources and financial needs which any beneficiary of the estate of the deceased has or is likely to have in the foreseeable future;
- Any obligations and responsibilities which the deceased had towards any person making the claim for an order or towards any beneficiary of his estate;
- The size and nature of the net estate of the deceased
- Any physical or mental disability of anyone making a claim or any beneficiary of the estate
- Any other matter, including the conduct of the person making the claim or any other person, which in the circumstances of the case the court may consider relevant.

Depending on who is bringing the claim, the court will also have to consider certain other matters. For example, if the claim is brought by a child of the deceased person's, the court must consider the factors set out above and:

The manner in which the child of the deceased person is being, or is expected to be, educated or trained.

In the case of step-children, the court will consider all the factors set out above and:

The extent to which the deceased person took on responsibility for the step-child's maintenance.

Whether any other person had a responsibility for maintaining the step-child (for example, their natural mother/father).

Whether, when they took on the responsibility for maintaining the step-child, the deceased person knew that he/she was not the step-child's natural mother/father).

### **What orders can the court make?**

The court has a wide discretion to redistribute the deceased person's estate to provide a fair result. The court can make any of the following orders:

An order that the person making the claim should receive regular payments (known as 'periodical payments') from the net estate of the deceased, for as much and for as long as the judge considers reasonable.

An order that the person making the claim should receive a single lump sum payment from the estate.

An order that a property owned by the deceased be transferred to the person making the claim.

An order for the settlement of any property for the benefit of the person making the claim, that is, an order creating a trust for the person making the claim

An order for the purchase of property using assets of the estate, and for such property either to be transferred to the person making the claim or to be held in trust for his benefit.

An order varying any pre- or post-nuptial (or pre- or post-civil partnership) settlement to which the deceased was a party, for the benefit of a surviving spouse or civil partner, or for a child or step-child of the deceased.

In cases where the court is satisfied that the person making the claim is in immediate need of financial assistance, but it is not yet possible to reach a final decision about the order that should be made, and the court is satisfied that there are assets available to meet the immediate needs of the person making the claim, the court also has jurisdiction to make 'interim' orders for a payment or payments from the estate. Any such payments may be taken into account when a final order is made.

### **How is a claim made?**

Making a claim against the deceased person's estate can be complex. For example, there are detailed rules about who should be involved in the court case; several people might be making claims at the same time and in competition with one another; there might be a large number of people who would stand to gain financially from

things remaining as they are and who might lose out if the court decides to make an order in someone else's favour. If so, some or all of them might want to get involved in the case.

For these reasons, bringing a claim under the 1975 Act is really not something you should do without taking legal advice first. You might think, 'He's bound to say that because he's a barrister and he'll charge me for his advice.' It's true: I will charge you for my advice. However, good lawyers save their clients money by helping them to achieve the best result possible in the shortest time and at the least possible cost. That is how good lawyers stay in business: they provide a cost-effective service that our clients value that they are happy to pay for and that they are happy to tell their friends and relatives about.

Providing a cost-effective service is particularly important in these sort of claims because:

People are generally able to claim their legal costs out of the deceased person's estate so it makes sense to get good legal advice from the start to make sure that your claim is handled as efficiently and effectively as possible. That ensures that as much money as possible is left to be distributed by the court.

The courts are increasingly willing to penalise people financially if they do not comply with the court's rules and any orders it makes about how the case should proceed. With good legal advice, you will avoid getting caught out and that will save you money and stress.

So if you are thinking about making a claim, please get in touch with one of the members of family team. We are here to help you.