



## **Do you think that you have a claim against the estate of someone who has died?**

If you believe that you should have been included in their will, or received more from their estate than you did, then you may be entitled to make a dependency claim. Steven Partridge, Head of Litigation at Ware & Kay in York & Wetherby, explains how:

“Where the deceased died without a valid will, the intestacy rules govern the automatic manner in which their married, or civil partner, and other close relatives, inherit their estate. If you are not provided for under the intestacy rules or, under their deceased's will if they had one, or you consider that the amount you will receive is not sufficient, you might be able to bring a claim against the estate to ensure you receive a share or a greater proportion of it.”

You can bring a claim against the estate for financial provision if you come within one of the specified categories of applicant that are set out in the Inheritance (Provision for Family and Dependents) Act 1975, and these are:

- the spouse or civil partner of the deceased;
- a former spouse or former civil partner of the deceased, but not one who has subsequently married or formed a new civil partnership;
- a person who had, during the whole of the period of two years ending immediately before the deceased's death, lived in the same household as if he or she were the husband, wife or civil partner of the deceased;
- a child of the deceased;
- any person who was not a child of the deceased, but was treated as a child of the family by the deceased, within a marriage or civil partnership; or

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- any person who immediately before the death of the deceased was being maintained, either wholly or partly, by the deceased.

If a case goes to court and you are able to bring a claim, the court will look at whether the deceased's estate made reasonable financial provision for you. Then if it did not, the court will go on to consider what provision should be made.

If your claim is successful you could receive maintenance or a capital sum, depending on the size of the estate and the existence of any other beneficiaries. A spouse will receive a sum that is reasonable in the circumstances, which may be a greater sum than that solely representing maintenance.

For all other classes of applicant, the court will order reasonable financial provision in the circumstances of the case. Calculating your entitlement can be complicated and negotiations must be conducted sensitively, since the personal representatives who are managing the estate may include members of the deceased's family who may themselves be a beneficiary of the estate.

If you believe that you fall into the last category, as a person being maintained by the deceased immediately before their death, either wholly or partly, you must demonstrate that the deceased was making a substantial contribution towards your reasonable needs.

This category is the least clear cut and consequently has led to many court cases. The deceased's contribution to your needs must have been "substantial", and it must outweigh, even if only slightly, money or equivalent, received from you. A common sense approach is required as illustrated by the following two cases:

The first, is a case in 2002, where a mother had cared for her severely disabled child and had therefore benefited from the financial provision made for the child by the Court of Protection albeit that the benefit was indirect. The mother was entitled to claim that she was being maintained by her child as at the date of the child's death for the purposes of a claim against the child's estate.

The second case, in 2009, is one where Mary Spencer Watson, a famous sculptress, had an intimate relationship with Margot Baynes. They lived together in Mary's house until Mary died, bringing up Margot's two children: Hetty and a brother, as their own children.

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Another ruling demonstrating the court's wide discretion in this type of litigation was in 2015, in a claim by a child of the deceased.

The deceased and her daughter had been estranged for 26 years. The mother omitted her daughter from her will, leaving her £500,000 estate to charity. The daughter's claim was successful. She was awarded a one third share of the estate, as the reasons for their estrangement and the daughter's exclusion from the will were considered unjust.

The decision in this case was not as momentous as the media has portrayed, as children have always been able to claim against their parent's estate. However, it shows the significance the court is likely to place on a claimant's background, particularly where they are of limited means, as well as blood ties to the deceased. The court also considered the connection the deceased had with the charities and the expectation they had of inheriting.

As an additional point, the case demonstrates the importance of having good reasons for excluding close family members from your will and documenting these reasons in detail. Therefore, professional advice is invaluable in making your will.

The time limit on bringing such a claim is very strict. The claim must be brought within six months of the grant of probate, which authorises the administration of the estate. Early legal advice is recommended as you will not have much time to consider your application following the death of the deceased.

### **Ware & Kay**

#### **Contact us**

To make a claim against an estate or for advice on any other contentious wills and probate matter, contact Steven Partridge, Head of Litigation and Dispute Resolution Department on York **01904 716000** or Wetherby **01937 583210**. Alternatively, if you prefer, you can email him on **steven.partridge@warekay.co.uk**.