

# A CLAIM AGAINST THE ESTATE

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If a Will has been signed by a mentally capable testator who knew the contents of their Will and there was no fraud or undue influence in the signing of the Will, the validity of the Will cannot be challenged. However, if the Will has not left sufficient financial provision for that person's family or dependants, it may be possible to make a claim against the estate.

Unlike most other jurisdictions, in England and Wales there are no restrictions on the distribution of assets by a Will and therefore the testator is not forced by law to leave a certain percentage to his dependants. Therefore a statute known as Inheritance (Provision for Family and Dependents) Act 1975 allows claims for reasonable financial provision from the deceased person's estate where no provision has been made by the Will or where the person has died intestate (without a Will). The 1975 Act is not intended to be grounds for disappointed beneficiaries although the Courts recognise the concept of moral obligation, particularly in cases of hardship.

The Courts would look at the following questions:-

- Does the Will (or intestacy provisions) make reasonable financial provision for the applicant
- If not, should the Court intervene so as to award such provision from the estate?

- If so, what type of provision is appropriate in this particular case?

Reasonable financial provision means what is appropriate for that applicant's maintenance.

### **The persons who may be able to make a claim are:-**

- The deceased's spouse or civil partner.
- A former spouse or civil partner – it is important to obtain a copy of the relevant divorce papers which would show any existing maintenance orders or possible agreements for a clean break.
- Cohabitants - if the death occurred on or after 1<sup>st</sup> January 1996, a claim may be brought by a person who lived with the deceased in one household as husband or wife for at least two years immediately prior to death.
- Children – child of the deceased has a wide meaning and includes adults, illegitimate or adopted children and those born after the parent's death. The court will have regard to the standard of living which the child enjoyed before the parent's death and to any future intentions of the deceased parent. Reasonable financial provision for a minor child comprises sufficient maintenance for that child to complete full time education or training. Even after this has ceased, the courts may be willing to extend the moral obligation principle to young adults.

## Contacts

For further information, please contact your usual Leeds Day contact or:-

St Neots Office  
01480 474661

Huntingdon Office  
01480 454301

St Ives Office  
01480 464600

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For a full list of our offices and people please visit

[www.leedsday.co.uk](http://www.leedsday.co.uk)

The information contained in this note is correct to the best of our knowledge at the time of publication. It is intended as a general guide only and should not be taken as specific advice.

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- A person treated as a child of the family – any person who is not a child of the deceased but who was treated as a child of the family in relation to any marriage or civil partnership to which the deceased was a party may bring a claim.
- Dependants – anyone else (not within the categories referred to above) must have been maintained wholly or partially by the deceased immediately before the death. Maintenance in this case means a substantial contribution in money or moneys worth towards the claimant's reasonable needs. It is important to establish the extent and status of the relationship between the deceased and the applicant i.e. how long it lasted, whether or not they lived in the same household all or part of the time, the form of provision made by the deceased and whether this was part of any contractual agreement. If regular contributions were being made to the applicant's maintenance, it is likely that there will be documentary evidence such as household accounts in the name of the deceased and copies of cheques etc.

The applicant must also show that the contribution towards maintenance was substantial and that there was a significant dependence on the deceased. A mutual dependency situation where some outgoings were discharged by the applicant and some by the deceased on a more or less equal basis or where the applicant's payments outweigh those of the deceased will not be sufficient.

It is important that prompt action is taken if you feel that you have any grounds to make a claim against an estate. A time limit of six months from the Grant of Probate applies in relation to such claims.



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