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Short notes on Succession Act Claims

The Succession Act is an Act which allows eligible persons to apply to the court to make provision for their maintenance education and advancing of life out of the estate of a deceased person.

You must be an eligible person and you must show need as set out in the matter considered by the court below.

The eligible persons are:

- a) A person who was the wife or husband of the deceased person at the time of the deceased person death.
- b) A person with whom the deceased person was living in a de-facto relationship at the time of the deceased person's death.
- c) A child of the deceased person or if the deceased person was at the time of his / her death, a party to a domestic relationship, a person who is for the purposes of the property relations at 1984 a child of that relationship.
- d) The former wife or husband of the deceased person
- e) A person:
 - I. That who was at any particular time wholly or partly dependant on the deceased person
 - II. Who is a Grandchild of the deceased person and was at that particular time or any other time a member of the household of which the deceased person was a member.
- f) A person with whom the deceased person was living in a close personal relationship at the time of the deceased death.

Matters to be considered by the court

1. The court may have regard to the matters set out below in 2 for the purpose of determining:
 - a) Whether the person in whose favour the order is sought to be made (the "applicant") is an eligible person, and
 - b) Whether to make a family provision order and the nature of any such order.
2. The following matters may be considered by the court:

- a) Any family or other relationship between the applicant and the deceased person, including the nature and duration of the relationship,
- b) The nature and extent of any obligations or responsibilities owed by the deceased person to the applicant, to any other person in respect of whom an application have been made for a family provision order or to any beneficiary of the deceased person's estate,
- c) The nature and extent of the deceased person's estate (including any property that is, or could be, designated as notional estate of the deceased person) and of any liabilities or changes to which the estate is subject, as in existence when the application is being considered,
- d) The financial resources (including earning capacity) and financial needs, both present and future, of the applicant, of any other person in respect of whom an application has been made for a family provision order of any beneficiary of the deceased person's estate
- e) If the applicant is cohabiting with another person—the financial circumstances of the other person,
- f) Any physical, intellectual or mental disability of the applicant, any other person in respect of whom an application has been made for a family provision order or any beneficiary of the deceased person's estate that is in existence when the application is being considered or that may reasonably be anticipated,
- g) The age of the applicant when the application is being considered,
- h) Any contribution (whether financial or otherwise) by the applicant to the acquisition, conservation and improvement of the estate of the deceased person or to the welfare of the deceased person or the deceased person's family, whether made before or after he deceased person's death, for which adequate consideration (not including any pension or other benefit) was not received, by the applicant,
- i) Any provision made for the applicant by the deceased person, either during the deceased person's lifetime or made from the deceased person's estate,
- j) Any evidence of the testamentary intentions of the deceased person, including evidence of statements made by the deceased person,
- k) Whether the applicant as being maintained, either wholly or partly, by the deceased person before the deceased person's death and, if the court considers it relevant, the extent to which and the basis on which the deceased person did so,
- l) Whether any other person is liable to support the applicant,

- m) The character and conduct of the applicant before and after the date of the death of the deceased person,
- n) The conduct of any other person before and after the date of the death of the deceased person,
- o) Any relevant Aboriginal or Torres Strait Islander customary law,
- p) Any other matter the court considers relevant, including matters in existence at the time of the deceased person's death or at the time the application is being considered.

Proceedings must be commenced within 12 months of the date of death. There is provision to allow the court to extend the time limit, however this is not always granted.

Further assets such as notional estate are included in the assets of the deceased i.e. where you have a situation where the deceased was a joint tenant of a property with another person. Normally that would be immediately transferred on death. However, there is an exception under the Succession Act and the deceased share would be held as part of notional estate.

Proceedings can be expensive however generally the court will order costs to come out of the estate unless; the application has very little merit.

Further the court in all cases will order a compulsory mediation of the parties in an effort to reduce costs and save hearing time. Mediation can also be entered into by the parties at any stage in an effort to save costs and satisfy the parties to the proceedings.

Should you wish to clarify any point or need further information please ring me.

The call is at no charge and obligation fee.

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