

Fact Sheet

I have been left out of a Will - Can I contest it?



It is difficult losing a loved one and it can be hurtful when you find out that you have been left out of their will or that you have not been adequately provided for in their Will.

In these circumstances, you may be able to make an application to the Court for provision from the deceased's estate known as a Testators Family Maintenance (TFM) claim.

How do I contest a Will?

To contest a Will you firstly need to ensure that you are eligible to make an application for a Testators Family Maintenance (TFM)

Who is eligible to contest a Will?

The law in this area differs in every State.

In Victoria, if the deceased died on or after 1 January 2015, you are eligible to make a claim if you are:

- **Spouse or domestic partner** at the time of death
- **Former spouse or former domestic partner** (the former spouse or former domestic partners must, as at the date of death have been able to take proceedings under the Family Law Act; not have taken Family Law Act proceedings, or else commenced, but not finalised those proceedings; and now be prevented by the death from taking or finalising Family Law Act proceedings)

- **A child of the deceased** (includes adopted child and stepchild)
- **Assumed child**
- **Registered caring partner**
- **Grandchild** (a grandchild must have been wholly or partly dependent on the deceased for proper maintenance and support)
- **Member of the household** (a person who was a member of the household of which the deceased was a member at the date of death or a former member of the household who would have likely in the future become a member of the household. The person must be wholly or partly dependent)

Who is not eligible to contest a Will?

Parents, nephews/nieces, siblings, aunts/uncles and cousins can only bring a TFM claim if they can qualify as a member of the household or as an assumed child.

What are the other requirements to contest a Will?

As well as being eligible, there are additional requirements that must be met:

- a. the deceased must have a moral duty to provide for your proper maintenance and support; and
- b. the entitlements under the deceased's Will fail to make proper provision for your proper maintenance and support.

What factors must the Court take into consideration when making a family provision order?

The Court must have regard to:

- The deceased's Will;
- Evidence of the deceased's reasons for making the Will in the terms he/she did; and
- Any other evidence about the deceased's intentions with respect to providing for you.

What factors may the Court take into consideration when making a family provision order?

There are a various factors that the Court may take into consideration such as:

- the size and nature of the deceased's estate;
- The nature and duration of your relationship with the deceased;
- Whether you have made any contributions the deceased estate;
- Your financial circumstances and needs; and
- The financial circumstances and needs of other beneficiaries in the estate.

Are there any time limits to make a TFM claim?

Yes, in Victoria a TFM claim must be made within six months of the date of which probate or letters of administration has been granted. If you do not make a claim within this period you could lose your right to do so.

A court may allow a claim to be made which falls outside this time period but this only occurs in exceptional circumstance.

Do you think you have a TFM claim?

Before you consider in bringing a TFM claim, it is imperative that you seek professional legal advice as to the merits of your claim because if you are not successful you may be liable to pay the estate's legal costs of defending your claim.

How can Hunt & Hunt help?

Contesting a Will can be complex and an emotionally challenging process, the Wills & Estates team at Hunt & Hunt have over 40 years experience and can provide you with the advice and support you need.

Contact Us today

The Wills and Estates team at Hunt & Hunt have over 40 years' experience and would be very pleased to provide you with assistance and answer any of your questions.

Contact us at willsandestates@huntvic.com.au or on (03) 8602 9202.

Book your free 30 minute consultation

We are expert at finding options for you throughout the estate administration process



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