The Inheritance (Provision for Family and Dependants) Act 1975

The Inheritance (Provision for Family and Dependants) Act 1975: Questions and Answers

The National Will Register
Certainty Will Search
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Introduction

The Inheritance (Provision for Family and Dependants) Act 1975 (also referred to as the Inheritance Act 1975) enables certain categories of people to bring a claim against a deceased person's estate where 'reasonable financial provision' has not been made for them under the terms of the Will or when the estate is intestate. This can be for example: spouses, ex-spouses (who have not remarried), cohabitees, children, people treated as children and dependants.

How can I get a copy of the Will?

Usually, a copy of a Will would be kept with the person's important papers. If you cannot find a copy, then contacting the law firm that acted for the deceased is the best starting point. This may be a law firm that has acted for them in purchasing of property, family law cases or business advice. If you don't know of any law firm or Will drafter that acted for the deceased, then you can try contacting their banks, as some still retain documents for customers.

The National Will Register also has useful search mechanisms. By conducting a Certainty Will Search, it will check to see if a Will has been registered on The National Will Register and in geographically targeted areas where the deceased used to live or work for Wills that have not yet been registered.

If you are still unable to find a copy of the Will, then placing a standing search with the Probate Registry is a good alternative. This can also be included when a Will Search Protect is conducted with The National Will Register. In England and Wales there is no individual that has an entitlement to see a Will except for the executors, until it becomes a public document either by probate being granted or a court claim being issued. A standing search with the Probate Registry will notify you if probate has been granted within six months of the search being placed and you will be sent a copy of the grant and Will at that time.

What can I do if someone won't release the original Will to me and I am an executor?

If you know who has a Will, then you can issue a subpoena to have it delivered into court. There is no defence to the subpoena once issued, and it contains a penal notice so you can normally be sure that it will be complied with.

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What can I do if an executor is not administering an estate?

Where executors are not administering an estate, it is possible to issue a citation to encourage action to be taken. There are three types of citation, which are as follows:

CITATION TO ACCEPT OR REFUSE A GRANT

A citation to accept or refuse a grant can be used to force a party with a right to the grant to act. The party cited is required to enter an Appearance in response to the citation. If an Appearance is entered, then the appearing party must take reasonable steps to apply for the grant and administer the estate, otherwise the citor may apply to the court for a grant to be issued to them instead.

TO TAKE PROBATE

A citation to take probate is used where a personal representative has intermeddled with the estate but has failed to take steps to obtain a grant six months after the death. Intermeddling is where a person has taken some steps towards administering the estate, but fails to obtain a grant. A citation can be issued by anyone with an interest in the estate. If the citee fails to enter an appearance or comply with the citation, the citor can apply to court for the intermeddler to obtain a grant, or for a grant to be issued to someone else.

TO PROPOUND A WILL

If a person has made several Wills and a beneficiary discovers that they may receive less under an earlier Will or under intestacy, the beneficiary can apply to propound a Will. The person propounding the Will needs to prove the validity of the Will. If the citees fail to enter an appearance or to propound the Will, the citor can apply to the court to ask for an order for a grant as if the Will were invalid.

How long does an executor have to finalise the estate and how do I remove/replace an executor or administrator?

Generally, personal representatives (executors or administrators) are allowed 12 months to administer an estate without interference from beneficiaries or creditors. This is referred to as the executor's year, but is not a rule set in stone.

If you are a beneficiary, you are entitled to apply to the court to seek the removal/replacement of an executor or administrator.

If a grant has not been taken out from the Probate Registry, an application can be made under section 116 of the Senior Courts Act 1981 to remove (or 'pass over') a personal representative and to appoint an alternative administrator. An application under section 116 can be made by any interested party, not just beneficiaries and creditors.

If a grant has been taken out from the Probate Registry, a beneficiary will need to apply to the court under section 50 of the Administration of Justice Act 1985 for the removal or replacement of a personal representative.

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The executor/administrator is refusing to provide the beneficiaries with information about the estate – how can I get an account?

Personal representatives must keep estate accounts and these should be made available for inspection by a beneficiary or creditor on request. If this request is refused or if the accounts are not clear or accurate, then it is possible to apply to the court for an inventory and account order. The court can then order that the information be provided.

How can I stop probate/letters of administration being granted?

If you want to stop the administration of an estate, you can enter a caveat.

WHAT IS A CAVEAT?

A caveat is a written notice given by someone (the caveator) which is filed at court to prevent probate being granted. The entry of the caveat prevents the grant of probate being issued without the caveator first being consulted, or being allowed to make representations to court about the matter. A caveat has effect for six months from the date of entry and may be renewed every six months until it is removed. It should be entered only in certain circumstances, which may include disputing the Will or the person applying for the grant of representation.

HOW CAN I REMOVE A CAVEAT? WHAT IS A WARNING?

If you disagree with the placing of a caveat, you can challenge the caveator by issuing a warning to them. The effect of a warning is to give the person who entered the caveat (the caveator) 14 days (including the date of service) to either lodge an appearance setting out their grounds for maintaining the caveat or to remove the caveat. If they do nothing, the caveat will be removed by the Probate Registry.

HOW DO I RESPOND TO A WARNING? WHAT IS AN APPEARANCE?

If you have entered a caveat and are served with a warning, you have 14 days (including the day you were served) to enter an appearance. If you do nothing, your caveat will be removed and the application for a grant can proceed.

The effect of entering an appearance is that no grant can be issued by the Probate Registry to anybody except you without an order from the court. Your caveat remains in force until the issues are resolved either by the consent of the parties or following a court hearing. You should have a valid reason for entering your appearance otherwise there is a risk of costs orders being made against you.

WHAT DO I DO IF AN APPEARANCE HAS BEEN ENTERED?

If an appearance has been entered then a caveat can only be removed by consent of the parties or by court order. If the parties agree to the removal of the caveat, it can be removed by consent by filing a summons and consent order at court. If the parties do not agree to the removal of a caveat then you may want to consider issuing a claim at court for the removal of the caveat.

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I haven't received what I expected under a Will, how can I claim further provision?

It is possible to bring a claim against an estate (whether there is a Will or not) under the Inheritance (Provision for Family and Dependants) Act 1975 for an award where the Will or intestacy rules do not make reasonable financial provision.

WHO CAN BRING A CLAIM FOR MORE INHERITANCE UNDER THE INHERITANCE (PROVISION FOR FAMILY AND DEPENDANTS) ACT 1975?

The following classes of people are eligible to make a claim from the estate:

- The spouse or civil partner of the deceased.
- The former spouse or civil partner of the deceased who has not remarried or entered a subsequent civil partnership, providing this is not precluded by the divorce order.
- Any person cohabiting with the deceased as if they are a husband/wife for at least two years prior to their death.
- A child of the deceased (includes an adult child).
- Any person treated as a child by the deceased.
- Any person who was being maintained by the deceased immediately before death.

WHAT ARE THE GROUNDS TO BRING A CLAIM FOR MORE INHERITANCE UNDER THE INHERITANCE (PROVISION FOR FAMILY AND DEPENDANTS) ACT 1975?

The court will consider whether the Will or intestacy makes reasonable financial provision for the applicant. When considering whether reasonable financial provision has been made, the Court will take into account the following factors:

- the current and future financial resources and needs of the applicant and the beneficiaries of the estate
- any obligations and responsibilities which the deceased had towards the applicant and the beneficiaries
- the size and nature of the estate
- any physical or mental disability of the applicant or any beneficiary
- any other matter which the Court may consider relevant, for example any party's conduct.

How long do you have to bring a claim for more inheritance or dispute the validity of a Will?

A claim under the Inheritance (Provision for Family and Dependants) Act 1975 must be submitted to the court within 6 months from the date of a grant of representation or letters of administration.

If you miss the deadline, it is possible to make an application under section 4 of the Inheritance Act for Court permission to proceed out of time. The criteria which the Court will take into account are set out in the case of Re Salmon (1981). The Court will consider:

- The length of the delay and the reasons;
- Whether negotiations were begun within the time limit;
- Whether the estate has been distributed;

- Whether the Claimant has a remedy against anyone else (for example a professional negligence claim against their solicitors);
- Whether the Claimant has a good claim.

Someone is making a claim on the estate, what should I do next?

If there is a potential claim against the estate, the personal representatives must not take steps to distribute the estate. The claim should be fully investigated to determine whether it has merit. The personal representatives should consider early negotiation to try and resolve the issues. The personal representatives should keep the beneficiaries updated and should try to obtain their permission to agree any compromise that is proposed. If they are unsure whether to take a step, they can also apply to the Court for guidance and permission to take the steps proposed.

Do I have to go to Court to resolve a claim on the estate?

Most claims are settled without the need to go to court and will only result in a trial if a settlement cannot be agreed with the other parties. Avoiding going to court is beneficial for all parties, as once a claim goes to hearing legal costs increase substantially, which often ultimately leads to a reduction in the value of the estate.

You should consider early negotiation with the other parties in an attempt to avoid court proceedings. For example, parties will need to consider whether to make settlement offers and take part in alternative dispute resolution, such as mediation.

This can result in the matter settling more quickly and therefore helps keep legal costs to a minimum. However, if the case cannot be settled it may be necessary to issue court proceedings or continue with any proceedings already issues to progress the matter toward trial.

Once a settlement has been reached, your solicitor will need to consider how to conclude the proceedings by, for example, drafting a settlement agreement or preparing a deed of variation, which will detail how the estate is to be distributed.

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Can I recover the legal costs of dealing with a dispute as executor?

Provided that it is reasonable to seek legal advice to resolve an issue, an executor may be able to have their reasonable legal costs reimbursed from the estate, before the estate is distributed to the beneficiaries.

This means that the costs involved in dealing with a claim against or involving an executor can result in reducing the amount of money a residuary beneficiary may receive from the estate. These cost pressures may therefore be used as a tactic to seek early resolution of disputes.

The information contained in this guide is meant for information purposes only and you should seek your own legal or professional advice where applicable.

This guide was produced by the Contentious Trusts and Probate team at Anthony Gold Solicitors LLP. You can make an enquiry by calling 020 7940 4060 or visiting **https://anthonygold.co.uk/**.

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