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CHALLENGING AN UNFAIR WILL OR A DISTRIBUTION UNDER THE ADMINISTRATION ACT

If you have been a dependant of someone who has died and you do not receive a fair share of the deceased's property, this information may help you.

- The person who has died may have left a Will dealing with their property.
- If there is no Will then the property may be distributed according to the *Administration Act 1903*.

Power of the Supreme Court

The Supreme Court can change the way a will or the Administration Act distributes property. The court can do this if it is satisfied that your needs are not properly looked after.

The court will look at whether the Will or the Administrative Act provide adequately for you:

- Proper maintenance;
- Support;
- Education; *or*
- Advancement in life.

The court's power to redistribute a deceased's property comes after a state law called the *Inheritance (Family and Dependants Provision) Act 1972*.

How to apply to redistribute a deceased estate

You will need a lawyer to apply it is a difficult process. The lawyer can prepare the documents and make the application to a judge of the Supreme Court.

The documents must include an affidavit (a sworn statement intended for use in the court) to prove:

- your relationship to the deceased;
- why you believe you are entitled to a share or a larger share of the property; *and*
- why you believe the Will (or if there is no Will, the law) does not provide well enough for you.

The documents must be filed at the Supreme Court. Copies must be served on the Executor or Administrator responsible for distributing the deceased's property. Your lawyer will arrange this for you.

If the application is for a child, this information must relate to the child.

Who may Apply?

To apply to the Supreme Court to alter a Will or the distribution under the Administration Act, you must be someone who was:

- married to the deceased person immediately before the death of the deceased person;
- living as the de facto partner of the deceased immediately before the death of the deceased person;
- at the time the deceased died, receiving, or entitled to receive, maintenance payments as a former spouse or former de facto partner of the deceased;
- a child or a child conceived but not born at the time the person died;
- a grandchild or a grandchild conceived but not born at the time the person died;
(Note: Not all grandchildren will be able to apply)
- a parent of the deceased.

West Australian law has changed to recognise:

- same sex de facto relationships; *and*
- de facto relationships where either of the parties are married to someone else or in another de facto relationship.

In certain circumstances, the definition of a parent will now include the same sex partner in a de facto relationship.

When to Apply

- you must apply **within six months** of the grant of Probate of the Will;
- if there is no Will, you must apply within six months of the grant of Letters of Administration;
- this six month time limit may be extended in some circumstances. Extensions are quite rare. You should make every effort to apply within the time limit; *or*
- If you are outside the time limit get legal advice as soon as possible.

The Hearing

The Court will fix a time to hear the application. In most cases, the judge makes a decision on the sworn documents prepared before the hearing.

Usually you will not have to go to Court to give evidence. Sometimes the judge may require you or another person involved to give evidence.

What the Court will Consider

The Court will take a number of things into account, including:

- how any change to the Will could affect other people in the Will;
- the sort of property involved and its value;
- the ages of the surviving dependants;
- the relationship to the deceased of other dependants;
- the needs of other dependants and those of the applicant; *and*
- the way the applicant acted towards the deceased and their relationship in general.

If you are a former spouse or former de facto partner and made no attempt to get maintenance from the deceased before their death, the Court is unlikely to change the way the deceased's property is distributed.

The Court will decide whether or not it will interfere.

Applications are not always granted.

Sometimes they may be refused.

What if I am affected by a Court application?

If the Court orders that someone should receive a share or a larger share of the deceased's property then someone else will have to receive less.

If an application is made to the Court, a summons and a copy of the documents filed will usually be given to each person whose rights under the Will or Administration Act will be affected.

If you receive a summons you should get legal advice about your rights.

If you receive a summons and do not wish the Court to interfere with the distribution of the property, you will need to file a document called an 'Appearance' at the Court. The time limit for filing an Appearance will be on the summons.

Get legal advice before filing an Appearance, or where that is not possible as soon as you can afterwards. You will need a lawyer to help you oppose the application in the Supreme Court.

If you do not file an Appearance the Court will make a decision in your absence. You will not have a chance to present evidence opposing the application. If this happens and it is a problem for you, seek legal advice as soon as possible.

This information outlines your rights and the procedure involved in challenging an unfair Will.

You will need help from a lawyer to make an application or to oppose an application made by someone else.

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