Claims against an Estate

Date : June 30, 2020

THE NEED FOR DISCLOSURE WHEN THERE ARE CLAIMS AGAINST AN ESTATE

A person is entitled to leave his or her estate to whoever they choose. However, there may be circumstances in which a person has been left out of a Will who believes they should have been included. This is because “eligible persons” can apply for a family provision claim against an estate. In simple terms, “eligible persons” include spouses, de-facto partners, children (including adult children), and grandchildren or members of the household who were dependent on the deceased.

For the Court to be able to determine how to decide the claim, it will look at all facts presented by tperson making the claim. Amongst many other factors, the Court will consider the relationship between the claimant and deceased person, the financial resources of the claimant, the age of the applicant and any provision made for the claimant by the deceased person.

The claimant and all other parties must ensure that they fully disclose information. There must be complete disclosure of assets, liabilities, financial resources and sources of income with documentary evidence. The Courts take a dim view of any lack of honesty.

When making a claim, the claimant must still establish that adequate support for his or her maintenance, education or advancement was not made under the Will.

If you have any enquiry in relation to being left out in a will or an enquiry about person making a claim where you are the Executor you can contact our Wills and Estate Planning team for assistance On 9635 7966