

Update: 15 July 2013 Claiming upon an estate: what are the time limits?



Fleming Muntz
Solicitors



Summary

There are certain persons eligible to make a claim upon the estate of a deceased person for provision (or additional provision) from the estate. The application is called a "family provision claim".

How is a claim made?

A claim is made by filing proceedings in the Supreme Court of New South Wales or the Supreme Court (or County Court) in Victoria.

Are there time limits?

Yes. In New South Wales, proceedings must be commenced not later than 12 months after the date of death of the deceased person.

In Victoria, proceedings must be commenced within six months after the date upon which a Grant of Probate of the will of the deceased (or Letters of Administration, if the deceased did not leave a will) is granted by the Supreme Court.

Can the time limits be extended?

Both New South Wales and Victorian courts have discretion, which they exercise on a case by case basis, to extend the time within which an application must be made.

The types of matters a court will consider in exercising this discretion include:

- The strength of a claim;

- The reasons why proceedings were not commenced in time;
- Whether there is any prejudice caused by the late commencement of the proceedings; and
- Whether there has been any unconscionable conduct by either side in the proceedings.

Despite this discretion, it is advisable to seek advice from a solicitor experienced in family provision claims as soon as possible and well within the time limitation periods. If, however, it is not possible, then a claimant should seek advice as quickly as possible as to the likelihood of success of a claim being made out of time.

How can Fleming Muntz help?

Fleming Muntz has solicitors experienced in family provision claims who can act on behalf of either an applicant bringing a claim or an executor defending a claim.

Important fine print

This update is for general information only. It is not a complete guide to the area of law. Competent advice should be obtained before taking any action.

Like you, we prefer to avoid unwanted emails. If you would rather not receive any further updates, please telephone us on (02) 6021 2222 or email to enquiries@theflemingmuntz.com.au.

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