



## JULY MAIL SHOT 2009

### Consequences of Cutting out Persons from your Will

During our lifetime, we are all free to dispose of our assets as we wish. What obligation is there then, if any, for you to make provisions for persons who are financially dependent on you?

Under the **Inheritance (Provisions for Family and Dependants) Act 1975**, persons who feel that they have not been adequately provided for in your estate may make a claim.

Who are the type of persons who can make a claim?

- (A) Your spouse/civil partner
- (B) Your ex-spouse/ex-civil partner who has not remarried or entered into a registered civil partnership
- (C) Your cohabitee
- (D) Your child or children
- (E) Any person that you have treated as a child of the family, within your marriage or civil partnership, i.e. stepchild
- (F) Any person who immediately before your death was being maintained either wholly or partly by you.



Any of the above persons must make a claim against the estate within six months of the date that the Grant is issued by the Probate Registry.

Before any of the above persons can establish a successful claim they must show that the disposition of the estate failed to make reasonable financial provision for them. If the Court finds in favour of the person making the application, the Court will then decide what is reasonable financial provision and make the appropriate Order.

There are two tests in determining what is **reasonable financial provision** depending on the person making the application:-

**Spouse/Civil Partner** – What would be reasonable in all the circumstances of a spouse to receive for financial provision, whether or not that provision is require for their maintenance?

**All other persons** – What would be reasonable financial provision in all the circumstances of the case to receive for their maintenance only?

Factors that the Court will need to consider:-

- the current or future financial resources and needs of any person making a claim
- the current of future financial resources and needs of any beneficiary of the estate
- your obligation and responsibilities that you have towards any person making the claim
- the size and nature of your estate
- any physical or mental disability of any person making the claim
- any other factor that the Court may consider relevant including conduct



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Kerseys Litigation Department have experience of dealing with claims under the Inheritance (Provision for Family and Dependents) Act 1975.

We recently acted in a case in which a married couple lived with the wife's mother. The wife had made a Will at a time when she did not own any property. The Will divided the wife's estate between her husband and several charities. The wife's mother later died and the wife inherited her mother's property in her sole name. The wife did not change her Will and when she later died, her husband had to bring a claim under the 1975 Act to secure his home and to receive reasonable financial provision from the estate. A reasonable settlement was reached but all this would have been avoided if the wife had updated her Will after receiving her mother's inheritance.

In conclusion, we would warn that in this current economic climate, it is likely that there will be more claims brought against estates under the 1975 Act. If you feel strongly about leaving a particular person out of your Will, the reasons for doing so should be discussed with your solicitor. It may be that a cash legacy could be bequeathed to that person or alternatively a Letter of Wishes could be drafted addressed to your Executors explaining why you have cut that person out of your Will. This Letter of Wishes would be lodged with your Will and although not legally binding, if a claim was brought against your estate, the Court may take into account the Letter of Wishes. Both of these options will reduce the risk of a claim against your estate.

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