

Eligibility and evidence for a family provision claim in NSW

A practical starting point if you think you have been left without adequate provision in a will. Work through it before your first appointment, and bring what you can to the meeting.

1. ARE YOU AN ELIGIBLE PERSON?

You may be able to make a claim if any of these apply:

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The spouse of the deceased at the time of death.

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A de facto partner living with the deceased at the time of death.

☐

A child of the deceased.

☐

A former spouse of the deceased.

☐

A grandchild or former household member who was wholly or partly dependent on the deceased.

☐

A person who was in a close personal relationship with the deceased at the time of death.

The last two categories also need factors that warrant the claim being made. If none of these fit you, take advice before assuming you cannot claim.

2. MIND THE DEADLINE

☐

Note the exact date of death.

☐

Confirm you are within 12 months of that date.

☐

If you are outside 12 months, note your reasons for the delay.

The 12-month limit is strict. The court can extend it only where you show sufficient reason. **Get advice early rather than close to the deadline.**

Our estates team has worked from Double Bay for over fifty years.

We will give you an honest view of your claim, explain the likely costs up front, and guide you through every step.

3. YOUR RELATIONSHIP WITH THE DECEASED

☐

A short written account of your relationship and its length.

☐

Any responsibilities the deceased had towards you.

☐

Any contributions you made to the deceased's welfare, care or assets.

☐

Any provision the deceased made for you during their lifetime.

4. YOUR FINANCIAL POSITION

☐

Your income, and your partner's or household income.

☐

Your assets, savings and superannuation.

☐

Your debts and regular expenses.

☐

Any current or future needs, including health, disability or care costs.

Financial need is one of the main things the court weighs. The clearer your picture, the stronger your position.

5. THE ESTATE AND ASSETS OUTSIDE IT

☐

A copy of the will, if you have one.

☐

A rough list of the estate's assets and debts.

☐

Property the deceased held jointly with someone else.

☐

Assets moved into a trust or company, or gifts made in the years before death.

☐

Details of the deceased's superannuation and any death benefit nomination.

NSW notional estate rules can pull some of these assets back into the estate. An estate that looks empty is not always the end of a claim. Superannuation often sits outside the will, so flag it early.

6. BEFORE YOU START

☐

Identify the executor or administrator of the estate.

☐

Note whether the estate has already been distributed.

☐

Get honest advice on the strength of your claim.

☐

Ask about likely costs and how they are usually dealt with.

Most claims settle at mediation rather than a final hearing. A clear view of your claim and the costs up front is worth more than optimism.

Talk to & Legal

Family provision claims turn on their facts and the 12-month deadline does not wait. Tell us about your situation and we will tell you where you stand.

Call (02) 9328 2944 or arrange a consultation at andlegal.com.au/contact

This checklist is general information, not legal advice.

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 andlegal.com.au

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