

3/8/2014

## Making a claim under the Law Reform (Testamentary Promises) Act 1949

Anyone can make a claim under this Act if the deceased person failed to fulfil their promise to the claimant that they would leave them something in their Will in return for services rendered or work done by the claimant. For example, a claimant may have looked after the deceased in their old age by taking care of them by cooking and cleaning for them or providing them with transport and the deceased promised that they would provide for them in their Will.

The difficulty faced by a claimant is being able to show that such a promise had been made. However, it is vital that there is some form of evidence to show there was such a promise. It is not necessary to prove the promise was made expressly. It may be enough to show a promise can be inferred from the surrounding circumstances.

### **Evidence of a promise**

Evidence of a promise can be either verbal or written, expressed or implied. It may take the form of letters, emails, statements made and other informal and formal documents (including previous Wills). Evidence of conversations the deceased may have had with other people may assist in determining the deceased's intentions.

### **What are the grounds for a claim?**

Under the Law Reform (Testamentary Promises) Act a claimant must be able to show that they did actually provide services or performed work for the deceased during their lifetime, and that the deceased made an express or implied promise to reward the claimant for those services or work by making some provision for the claimant in their Will.

### **How will a Court decide whether a claimant should receive something under the Law Reform (Testamentary Promises) Act?**

The Court will particularly look at the following:

- The circumstances in which the promise was made and the services were rendered or the work was performed;
- The actual value of those services or the work;
- The amount or value of what was promised;
- The size of the estate;
- All other claims against the estate.

## **If the claimant is successful what can the Court do?**

If a claimant has established that they performed services or carried out work for the deceased during their lifetime and that the deceased did promise to reward the claimant for performing those services or carrying out that work then the Court can award the claimant reasonable payment out of the estate. When determining what is a reasonable amount the Court will have regard to all the circumstances of the case including the nature of the other claims on the estate.

## **Time frames**

In usual circumstances a claimant must file their claim within twelve months of the date of probate being granted. In limited circumstances, the Court may extend this time frame.

If you believe you have a claim under the Law Reform (Testamentary Promises) Act it is critical to get good legal advice promptly after the will maker dies. Graeme Withers and Julie Withers of Graeme Withers Law are experienced Solicitors who can assist you with all matters concerning inheritance claims, making Wills and family matters. Please contact Graeme on (04) 478 4889 (027) 715 5421 or Julie on (04) 478 4888 (027) 478 4888 or by email [info@witherslaw.co.nz](mailto:info@witherslaw.co.nz)

*This note is intended for general information only. It is not intended to be relied on as a substitute for legal advice which focusses on individual circumstances.*