BEEN LEFT OUT OF A WILL?

You May Still Be Entitled To A Share Of The Estate

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A Note From Alex

If you've been left out of a Will, you might be wondering whether you have any options.

The answer depends on the circumstances.

Every situation is different, which is why it's important not to jump to conclusions too quickly.

This guide covers the questions people ask most often and the things worth considering before deciding what to do next.

Inside This Guide

Am I Eligible To Make A Claim?

Who may be able to make a claim against an estate.

Have I Been Treated Unfairly?

Common situations that lead people to seek advice.

What Factors Matter Most?

The things Courts consider when assessing a claim.

Important Time Limits

Why timing matters and what deadlines apply.

What Does The Process Look Like?

A practical overview of what usually happens.

Is It Worth Pursuing?

Costs, risks and practical considerations.

COULD YOU BE ELIGIBLE TO MAKE A CLAIM?

People who may be eligible can include the following categories:

Spouse

A spouse of the deceased.

Former spouse

A former spouse in the relevant circumstances.

Domestic partner

Including a de facto partner where the requirements are met.

Child

Including an adopted child where applicable.

Stepchild

The legal category and relationship require careful review.

Grandchild

Eligibility may depend on dependency and other circumstances.

Household member

Household membership and dependency may need to be established.

Important qualification

Eligibility depends on the person's relationship, dependency and the full circumstances. Being in a category does not guarantee a claim or outcome.

COMMON REASONS PEOPLE BRING ESTATE CLAIMS

Being excluded from a Will

A complete or unexpected exclusion may prompt questions about whether adequate provision was made.

Receiving substantially less than siblings

Unequal treatment may require the wider family and estate circumstances to be examined.

Financial hardship

Current or future financial needs may be relevant to whether provision was adequate.

Blended family disputes

Competing relationships and responsibilities can make the assessment more complex.

Promises not honoured

Representations made by the deceased may need to be supported by evidence.

Dependents inadequately provided for

The nature of the dependency and the provision made may need careful assessment.

A concern does not automatically establish a claim. Advice is needed to assess the evidence and the whole estate.

DO I POTENTIALLY HAVE A CLAIM?

Use these questions as an initial prompt, not as a legal test or a prediction of the outcome.

- [ ] Were you financially dependent on the deceased?
- [ ] Were you left little or nothing?
- [ ] Do you have financial needs that were not addressed?
- [ ] Was the estate substantial?
- [ ] Were other beneficiaries treated significantly more favourably?

The more questions you answer 'yes' to, the more important it is to obtain legal advice.

A worthwhile claim is not determined by one answer. The likely value of the estate, evidence, competing claims, costs and your circumstances all need to be considered.

UNSURE WHETHER YOU HAVE A CLAIM?

Our Estate Disputes Team can assess your eligibility, explain your options and help you understand whether pursuing a claim is likely to be worthwhile.

Book a confidential consultation.

IMPORTANT TIME LIMITS

Strict limitation periods apply and delay may affect your rights.

A family provision claim must be commenced within six months from the grant of probate or letters of administration, not six months from the date of death. Extensions are limited and not guaranteed, particularly once the estate has been distributed. Obtain advice promptly so the relevant date and options can be checked.

Do not assume the relevant date. The grant and the circumstances of the estate should be checked promptly.

WHAT MAKES A CLAIM POTENTIALLY WORTHWHILE?

The Court does not simply divide an estate equally or apply a guaranteed percentage. A practical assessment looks at your financial position and future needs, the relationship with the deceased, the size and nature of the estate, other beneficiaries, contributions, responsibilities and the reasons for the provision made.

Your position

Needs, age, health, earning capacity and benefits already received.

The relationship

Relationship, support, contributions and the deceased's responsibilities.

The whole estate

Estate size, available assets, competing claims and other beneficiaries.

CONTESTING THE VALIDITY OF A WILL VS MAKING A FAMILY PROVISION CLAIM

A validity challenge asks whether the Will itself should be accepted. **A family provision claim** generally accepts the Will as valid but asks whether adequate provision was made for an eligible person.

ESTATE CLAIM PROCESS

Stage	What it involves
1. Initial assessment	Clarify the relationship, provision made, documents and possible timing issue.
2. Eligibility review	Assess the relevant category and the circumstances supporting a claim.
3. Investigation of the estate	Review the Will, grant details where available, estate information and financial evidence.
4. Negotiation or mediation	Explore a practical resolution with the other parties where appropriate.
5. Court proceedings if required	Proceed in Court if the matter cannot be resolved another way.
6. Resolution	Settle or obtain a determination, with advice about implementation and costs.

Many matters resolve before a final hearing, but no result is guaranteed.

FUNDING AND PRACTICAL CONSIDERATIONS

- Whether pursuing a claim is commercially worthwhile depends on the likely value of the estate, the strength of the evidence, competing claims, costs and the applicant's circumstances.
- Many disputes resolve through negotiation or mediation without a final hearing, but no outcome is guaranteed.
- Early advice helps avoid assumptions about costs, prospects and the likely benefit of pursuing a claim.
- Costs and any funding options must be discussed and assessed for the individual matter.

REAL-LIFE STYLE EXAMPLES

Illustrative scenarios only — not case results and not predictions.

Illustrative scenario only

Adult child excluded from a Will

The assessment may focus on financial need, the relationship, estate size and competing beneficiaries.

Illustrative scenario only

Stepchild seeking provision

The legal category, relationship, dependency and support must be carefully assessed.

Illustrative scenario only

Financially dependent family member

The nature and extent of dependency and any unmet needs may be relevant.

Illustrative scenario only

Unequal distributions between siblings

Unequal treatment alone does not establish a claim. The whole family and estate circumstances must be assessed.

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FREQUENTLY ASKED QUESTIONS

Who can make a claim?

Potentially eligible people include spouses, former spouses, domestic partners, children, stepchildren, grandchildren, financial dependents and qualifying household members. The full circumstances must be assessed.

What factors are considered?

The relationship, your needs and resources, the estate, other beneficiaries, contributions, responsibilities and the provision already made may all be relevant.

Are there time limits?

Yes. A claim must be commenced within six months from the grant of probate or letters of administration, but the relevant date and any available options should be checked promptly.

How long can a claim take?

Timing varies with the evidence, estate, parties and whether the matter resolves by agreement or requires Court proceedings.

Do all claims go to Court?

No. Many matters are discussed through negotiation or mediation, although no particular outcome is guaranteed.

ABOUT THIS GUIDE

This guide was prepared by Alex O'Donohue, Principal Lawyer at Stratus Legal Group. Alex advises clients throughout Victoria in estate disputes, family provision claims and contested estate matters.

SHOULD YOU SEEK LEGAL ADVICE NOW?

Prompt advice is appropriate if you may be eligible, have been excluded or inadequately provided for, have financial need, are unsure when probate was granted, or are concerned that the estate may be distributed.

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BOOK ONLINE

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This guide is intended as general information only and does not constitute legal advice. The law may change and individual circumstances vary. You should seek independent legal advice specific to your situation.
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