

Spousal assistance provisions in estate situations

By Harry Kessaram

Perhaps the only thing sadder than the death of one party to a marriage is the survivor being left alone without adequate provision having been made for him or her. This state of affairs might come about either because there were insufficient assets owned by the deceased spouse, or because the deceased spouse did not have a will, or maybe even because the will didn't leave anything to the surviving spouse.

There's not much you can do if your spouse dies leaving everything to you in his will but dies impecunious. However in the event your spouse dies with say, significant assets, but for some reason or other, they aren't left to you, you could make a claim against your deceased spouse's estate for financial provision under the Succession Act 1974.

It may be that your spouse dies without a will and is survived by not only you, but children as well. The law provides that you (as surviving spouse) are entitled to half the estate (or \$100,000, whichever is greater) with the kids getting the other half (or remainder). But what if you need a bit more than half to live off?

There is the possibility of asking the Court to make an order benefiting you with more than just half of the estate. The legal machinery in the Succession Act also allows you to ask the Court for increased financial provision even if your spouse did have a will, and not just on an intestacy.

The Act is actually designed for dependents generally (including children and grandchildren) to make applications of this sort and in fact it even allows former spouses (who haven't remarried) to have a crack at the deceased's estate. There is a time limit for applications of this nature: they have to be made within six months

of probate or letters of administration being taken out in respect of the deceased's estate.

There may also be instances where a spouse passes away intestate leaving, say, a wife and kids, and the wife wants her share of the estate to include the house. The Succession Act contains provisions for enabling the surviving husband or wife of a deceased person to acquire the matrimonial home. Essentially, the surviving spouse can require the estate representative to appropriate the house in satisfaction of his or her estate entitlement under an intestacy where he or she might otherwise have had to share the house with children. The Act goes into some detail as to how this is to be accomplished but the important thing is to know that this provision exists in the Act to assist you if you find yourself in this position.

There are other ways that a surviving spouse could increase her share of an estate that might otherwise be divided between the spouse and children, and that is by agreement with the children. A deed of family arrangement can essentially vary rights and entitlements between family beneficiaries where everyone is in agreement that a redistribution should take place. It perhaps should be the first avenue to consider before resorting to Court applications which invariably will involve contention between the parties. As always, however, your first stop should be to get appropriate legal advice on what course of action may best suit your situation.

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