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## TESTATOR'S MORAL DUTIES IN WILLS

When writing a Will it is important to remember that you have a moral duty to provide for certain family members. If you do not make adequate provision for them in your Will, then they may make a claim under the Family Protection Act 1955 ("the Act") for a greater share in your Estate.

The following family members may make a claim under the Act for adequate provision under a Will:

- (a) Spouses or Civil Union Partners;
- (b) De facto partners;
- (c) Children;
- (d) Grandchildren;
- (e) Step-children;
- (f) Parents.

De facto partners must be in a relationship with the deceased for at least three years before the deceased passed away. There are certain exceptions to this, such as if there is a child of the de facto relationship.

Grandchildren who are living at the deceased's death may make a claim under the Act. In considering a grandchild's application, the Court looks at all of the circumstances of the case and in particular if the deceased has made provision for the grandchild's parents.

A step-child includes a child of the deceased's spouse, civil union or de facto partner who is living at the date of the marriage, civil union or beginning of the de facto relationship. They may make a claim under the Act provided they were being maintained or legally entitled to be maintained for by the deceased just before their death.

Parents can apply for a greater share in the estate if:

- (a) There is no spouse, civil union partner, de facto partner or child of the deceased living at the date of the claim;
- (b) They were being maintained or legally entitled to be maintained for by the deceased just before their death.

If a family member wishes to take a claim under the Act, they must do so within 12 months from the date Probate or Letters of Administration were granted.

In deciding whether to grant a Family Protection Act claim, the Court looks at several factors, including the economic need of the family member making the claim, the family member's relationship with the deceased and their behaviour.

In certain circumstances a family member's behaviour may be so bad that they may not be able to receive a greater share in the Estate.

If you do not want to provide for a family member in your Will, it is important to write a note which sets out why they are excluded. This should be held with your original Will. The note will be considered by the Court and will reduce the chance of a successful claim under the Act.

For example:

Geraldine's mother died when her and her little sister Katherine were only young. Geraldine and Katherine lived with their father until they moved out of home when they turned 18. When their father became ill, Geraldine moved back home to take care of him.

After he passed away, Geraldine was shocked to find out that their father gave 95% of his Estate to Katherine and 5% to Geraldine without any note explaining why he gave the daughters unequal shares.

As their father did not provide for Geraldine adequately in his Will, she was able to make a claim for a greater share in his Estate under the Act.

If you have any queries in relation to moral duties in Wills, or Family Protection Act claims, please do not hesitate to contact us.

**The next newsletter covers the topic of—  
fencing Your Swimming Pool—by Davina Rowan**