



## Family Provision Application – The Importance of Time Limits

Our Courts are seeing a greater number of Applications under the family provision of the *Succession Act 1981 (Qld)* (“the Act”). You can make a family provision Application if you are the spouse, de facto spouse, former spouse, child, step-child or dependent of the deceased and do not believe that their will has sufficiently provided for you.

The Court requires strict compliance with the time limits detailed in the Act by persons who intend on making a family provision Application. You must provide notice to the Executor of an intention to make a family provision claim within six months of the date of the deceased’s death. You must then file an Application to either the Supreme Court of Queensland or District Court of Queensland, depending on the value of the estate, within nine months of the deceased’s death. Section 41(8) of the Act provides that the Court is not to hear any Application under the family provision unless the Application was instituted within the nine months after of the death of the deceased, unless the Court directs otherwise.

### Case Study

In the recent case of *Curran & Ors v McGrath [2010] QSC 172*, the Court was required to consider a family provisions Application that had been filed fifteen months after the expiry of the nine month time limit. The Applicants were the four daughters of the deceased and the Respondents were the Executors of the Estate and the two sons of the deceased.

The deceased, the deceased’s wife and the Respondents had conducted a grazing and farming business for many years prior to the deceased’s death on 28 November 2006. Prior to the deceased’s death, the family business had been reconfigured into two separate partnerships and the joint tenancy of assets held by the deceased and his wife had been severed. The deceased’s will effectively provided for his interest in the partnerships and properties previously jointly owned by the deceased and his wife to be distributed to the Respondents.

On 24 April 2007, the deceased’s wife and the applicants gave notice to the Executors of an intention to make a family provision Application. Thereafter, the deceased’s wife filed a family provision Application with the Supreme Court of Queensland and negotiated a resolution of her claim with the Respondents. The Respondents did not receive copies of any proceedings instituted by the Applicants prior to the expiry of the nine month time limit. The Applicants gave notice that they had filed a family provision application in November 2008. The Application was served on the Respondents in March 2009.

In order to determine whether to grant leave to the Applicants for their family provision Application to be heard, the Court considered the following principles outlined in *Hills V Chalk [2008] QCA 159*:

1. Whether there is an adequate explanation for the delay;
2. Whether there would be any prejudice to the beneficiaries;
3. Whether there has been any unconscionable conduct by the Applicants; and
4. The strength of the Applicants' case.

## Result

The Court took the view that there was no reasonable explanation for the delay as the Applicants had been legally represented during the whole of the nine months following the death of the deceased and had provided notice of an intention to make a claim within the requisite time period prescribed by the Act. It was not sufficient for the Applicants to contend that they were awaiting the resolution of their mother's claim prior to filing their family provision Application.

The Court further stated that the Application could be dismissed on two grounds: the Applicants did not satisfy the principles outlined in *Hills v Chalk* and there were limited estate assets available for distribution at the time of hearing the matter to warrant a family provision claim by the Applicants. The Court dismissed the application for an extension of time, dismissed each Applicant's application for further and better provision from the estate and ordered the Applicants to pay the Respondents' costs.

The above case outlines the approach adopted by the Courts in respect of family provisions applications filed outside of the nine month time limit. If you or a person you know has the capacity to make a claim for further and better provision it is imperative that they receive legal advice as soon as possible to ensure that they can protect their rights and interests.

For assistance with all your wills & estate planning needs, email us at [info@msslawyers.com.au](mailto:info@msslawyers.com.au) or visit our website [www.msslawyers.com.au](http://www.msslawyers.com.au). Alternatively, contact our professional team at our Gold Coast or Brisbane office.

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