



# Understanding time limits in NSW for contesting a Will

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The purpose of time limits on family provision applications (to [challenge a Will](#)) is to ensure that applications do not unduly interfere with the prompt administration of the deceased's estate. Accordingly, if you want to explore the options of making a family provision claim, it is important that you do so within the time frame required.

This blog will assist you with eligibility to contest a Will, the court's considerations, time frames, and what to do if you are outside the time frame.

## What does it mean to contest a Will?

In New South Wales, you can challenge a Will by making a family provision claim. This claim is an application to the Supreme Court of NSW by an eligible person (see below), to receive a share, or a larger share, of the deceased person's estate when they are of the opinion that the Will does not adequately provide for their needs.

## Are you an eligible person to make a family provision claim?

Section 57 of the *Succession Act 2006* (NSW) ("**the Act**") requires that an eligible person fall into one of the following categories:

### 1. A spouse or de facto partner

Generally speaking, if you were married to the deceased at the time of their death, you are eligible. Similarly, if you were in a de facto relationship and living together in a genuine domestic partnership at the time of their death, you are eligible.

## 1. A former spouse

If there is an ongoing financial obligation or moral duty owed to you, then there might be eligibility.

## 1. A child of the deceased

This includes both minor children and adult children.

## 1. A grandchild

Eligibility for grandchildren is not automatic and requires proof that the grandchild was financially dependant on the deceased and was a member of the household of the deceased.

1. **A member of the deceased's household** who was wholly or partly dependant on them; or

2. **A person in a close personal relationship** with the deceased.

# Time limits to make a family provision claim

Once you have assessed that you are an eligible person to make a family provision claim, you need to be mindful that any application is made to the Supreme Court of NSW before the time limitation period expires.

Under section 58 of the Act, you must file your claim **within 12 months of the date of death**.

If you genuinely did not know that the deceased had died, or you did not know that the deceased had not left provision for you in their Will, then you can ask the Court for an extension. The Court has discretion to accept claims after the 12-month window, but only if you can show sufficient cause for the delay. As this is discretionary, the Court will assess each case on its facts and make its findings.

# Applying to file out of time

If you are outside the 12-month window, then you will need to apply to the Supreme Court of NSW for permission to proceed out of time. This is known as 'seeking leave to file out of time'.

To proceed with this, you should instruct a lawyer who will prepare an Affidavit explaining:

- the reason for the delay;
- when you were notified about the death;
- when you were notified about the existence of the Will of the deceased;
- why it would be unfair not to allow your claim;
- whether the estate has already been distributed.

## In summary

- You have 12 months from the date of death to make a family provision claim in NSW.
- You must be an eligible person under section 57 of the *Succession Act 2006* (NSW) to make a claim;
- Even if you are an eligible person and you apply within the time limit, you must prove your need.
- If you have missed the 12-month time limit, it is still possible to get an extension. This is discretionary, and there is no guarantee that an application for leave out of time will be successful.
- Don't wait until it is too late. If you are considering making a claim, speak to a lawyer early to obtain legal advice on your specific circumstances.

## Get help from a deceased estates lawyer

If you think that you might be eligible for a family provision claim, or if you are unsure, it is worth meeting with a lawyer who is experienced in estate litigation to discuss your eligibility and prospects of a successful claim.

### Contacting E&A Lawyers

For more information or to arrange a consultation with a lawyer, you can call or email us.

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