



## Reasons for care with family provision claims

### Former wife wins substantial family provision claim

A court has ordered that a former wife receive \$750,000 from her former husband's estate of \$5m. The couple had cohabited for 18 months and divorced in 1995. In 1992 an order altering their property interests was made after a contested hearing in the Family Court. Thereafter the former wife engaged in "relentless hostility" against her former husband. The court considered that this conduct amounted to a disability, and shouldn't be countered against her. The ex-wife had been injured in 3 motor accidents and suffered various disabilities and need for medication and treatment. The judge concluded that inadequate provision had been made for the former wife's proper maintenance and advancement in life. The judge stated that the divorced couple could have obtained

certainty about the release of family provision claims by obtaining a release of those rights. But, as to this, see the next page!



### Grandson wins substantial family provision claim

Filomena Rodi died in 2015 at the age of 95. She left her estate equally to her 4 children. She left nothing to her grandson Phillip who lived with her for 10 years before her death. During that period, apart from providing a roof over his head, she provided Phillip with meals and communal living. He was not charged rent or board although he paid outgoings such as water rates and electricity charges. After Filomena's death. Phillip brought a family provision claim asserting that he should have received something from her estate.

The Court found that the relationship between Filomena and Phillip went beyond that which normally exists

between grandparent and grandchild. It decided that she ought to have made provision for Phillip in her will. It ordered that he receive \$200,000.00 out of her estate of about \$1,200,000.00. Filomena's last will was made in 2008, only shortly after Phillip started to live with her. The case tells again about the need to regularly review wills so that they reflect the current and foreseeable circumstances, not past events.



## Release of family provision claims: don't wait till it's too late

When parties separate they usually make an agreement about the division of their property. That can include a release of rights to make a family provision claim against each other's estate after one of their deaths. There are two stages to a legally effective release. The first is the agreement to release. The second is court approval of the release. The second step is

ignored with peril, as demonstrated by the facts of Joanne and Jarrod Dark's agreement to release.

They separated in 2012 but never divorced. She re-partnered and soon fell pregnant with the new partner's child. Joanne and Jarrod Dark entered into a family agreement with a family provision release but never got the release approved by a court. He died. She brought a family provision claim. The executor then sought to get the release approved. The court said that the release wasn't fair and reasonable, or prudent, or advantageous to Mrs Dark. It didn't approve it. Instead it awarded her \$360,000.00 from his estate.



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