

Finance

How to secure your fair share after a raw deal on a farm will

Analysis
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OVER the years in my role as an agricultural expert witness I have encountered many cases of unfair treatment of family members or trusted support people who had a legitimate expectation to benefit from the estate of a deceased person.

Such expectations could be based on promises made during the deceased's lifetime or could be as a result of a child being poorly provided for in comparison to his or her siblings. In many instances, the circumstances may involve a person providing help and support to the deceased during their lifetime well above and beyond the call of duty.

Where such cases end up before the courts, they will generally fall into two categories:

■ **Section 117 cases** where the person taking the action feels that they have been poorly treated in comparison with other family members

■ **Proprietary Estoppel cases** where there was a clear expectation that the person taking the case would have been adequately provided for but was not.

SECTION 117 CASES

The most common type of case that I have encountered in this regard is where a person finds out that their deceased parent has favoured other children or other parties outside the family but has overlooked them.

Oftentimes the reason for such a situation can be as a result of a breakdown in the relationship between the parent and child at some point during their lives.

But quite frequently it can be as a result of a perception on the part of the child that the parent was unduly influenced by another family member or possibly by a friend neighbour or acquaintance. Such perceived influence is often referred to in farming circles as 'courting'.

Section 117 states that 'where, on application by or on behalf of a child of a testator (the person who made the will), the court is of the opinion that the testator has failed in his moral duty to make proper provision for the child in accordance with his means, whether by his will or otherwise, the court may order that such provision shall be made for the child out of the estate as the court thinks just'.

The definition of a child includes adopted children, step-children, foster children and children from outside marriage, any or all of whom can be of any age.

The court will consider the application from the point of view of a "prudent and just parent", taking into account the position of each of the children of the testator and any other circumstances which the court may consider of assistance in arriving at a decision that will be as fair as possible to the child to whom the application relates and to the other children.

There is no automatic right for a child to inherit from a parent and the 1965 Succession Act only sets down that the parent 'must not have failed in their moral duty to provide for a child.' That is one basis upon which a Will could be contested, another is where the



Going legal: A court action may be necessary to resolve the expectations and entitlements of the various parties to a will

There are two main legal options for family members and others who feel they have been unfairly treated in the distribution of a farm estate

parent was not of sound mind when the Will was made.

The court will take the following factors into account in determining whether adequate and proper provision has been made for the person taking the case:

- the amount left in the will to the surviving spouse (or else the value of the minimum statutory legal right share of the surviving spouse).
- the number of children, their age and their position in life when the parent who made the will dies
- the parent's means
- the age, financial position and prospects in life of the person making the claim under section 117
- whether the parent has already made proper provision for the child
- the facts at the date of death, not when the will was made.

Time limits

There is a strict time limit which is six months from the issuing of the grant of probate in the deceased's estate. If the claim is not taken within that time frame it is statute barred and can no longer be brought before the courts.

Costs

Costs are at the discretion of the court but people who fail by bringing what are deemed to be nuisance or unfounded claims will more than likely suffer the costs. There is currently legislation going through the Dáil where it is proposed that a claimant who is unsuccessful cannot claim costs against the

estate of the deceased. This will make people think twice before taking such a case. It also worth noting that legal fees cannot be based on a percentage or proportion of any award granted.

PROPRIETARY ESTOPPEL

This is by far the most common type of case of this nature that I have encountered in my role as an expert witness. Otherwise known as legitimate expectation, the doctrine of proprietary estoppel is regularly applied by the courts where a child, relative or non relative claims to have a legitimate expectation of benefiting from a deceased person's estate.

A typical example of this is where a family member or indeed an unrelated person has worked on a farm for a long period of time, often attending to the owner's welfare as well as running the farm on their behalf. On the basis of clear promises or indications made to them it was their clear expectation that the farm would be theirs on the death of the deceased.

The person may have foregone other work or career opportunities by relying on such indications. Such cases can be difficult to establish in court but in many instances the applicant may create a fall-back position by also claiming for inadequate or underpaid remuneration in respect of the work he has done as generally in such cases remuneration is often token in nature.

Such claims for underpaid remuneration may be subject to the statute of limitations which may limit compensation to the previous six years.

There could be a perception that the parent was unduly influenced by another family member or possibly by a friend neighbour or acquaintance. Such perceived influence is often referred to in farming circles as 'courting'.



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