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as at 6 February 2021

Law Reform (Testamentary Promises) Act 1949

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An Act to make better provision for the enforcement of promises to make testamentary provision in return for services rendered

1 Short Title

This Act may be cited as the Law Reform (Testamentary Promises) Act 1949.

Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.

Note 4 at the end of this reprint provides a list of the amendments incorporated.

This Act is administered by the Ministry of Justice.

2 Interpretation

In this Act, unless the context otherwise requires,—

court means a court having jurisdiction in the proceedings by virtue of section 5

promise includes any statement or representation of fact or intention

testamentary expense includes any fee or amount that is payable to a trustee in respect of the administration of the estate of a deceased person.

Section 2: replaced, on 1 July 1992, by section 2 of the Law Reform (Testamentary Promises) Amendment Act 1991 (1991 No 64).

Section 2 **testamentary expense**: inserted, on 30 January 2021, by section 161 of the Trusts Act 2019 (2019 No 38).

3 Estate of deceased person liable to remunerate persons for work done under promise of testamentary provision

(1) Where in the administration of the estate of any deceased person a claim is made against the estate founded upon the rendering of services to or the performance of work for the deceased in his lifetime, and the claimant proves an express or implied promise by the deceased to reward him for the services or work by making some testamentary provision for the claimant, whether or not the provision was to be of a specified amount or was to relate to specified real or personal property, then, subject to the provisions of this Act, the claim shall, to the extent to which the deceased has failed to make that testamentary provision or otherwise remunerate the claimant (whether or not a claim for such remuneration could have been enforced in the lifetime of the deceased), be enforceable against the personal representatives of the deceased in the same manner and to the same extent as if the promise of the deceased were a promise for payment by the deceased in his lifetime of such amount as may be reasonable, having regard to all the circumstances of the case, including in particular the circumstances in which the promise was made and the services were rendered or the work was performed, the value of the services or work, the value of the testamentary provision promised, the amount of the estate, and the nature and amounts of the claims of other persons in respect of the estate, whether as creditors, beneficiaries, wife, husband, civil union partner, children, next-of-kin, or otherwise.

(2) This section shall apply—

(a) whether the services were rendered or the work was performed before or after the making of the promise:

(b) notwithstanding anything to the contrary in subpart 2 of Part 2 of the Property Law Act 2007 or any other enactment.

(3) Where the promise relates to any real or personal property which forms part of the estate of the deceased on his death, the court may in its discretion, instead of awarding to the claimant a reasonable sum as aforesaid,—

(a) make an order vesting the property in the claimant or directing any person to transfer or assign the property to him; or

(b) make an order vesting any part of the property in the claimant or directing any person to transfer or assign any part of the property to him, and awarding to the claimant such amount (if any) as in its opinion is reasonable in the circumstances.

(4) In awarding any amount on a claim under this section the court may, if it thinks fit, order that the amount awarded may consist of a lump sum or a periodical or other payment.

(5) The incidence of any payment or payments so ordered shall, unless the court otherwise determines, fall rateably upon the whole estate of the deceased, or, in cases where the authority of the court does not extend or cannot directly or indirectly be made to extend to the whole estate, then to so much thereof as is situated in New Zealand.

(6) The court shall have power, after hearing such of the parties as may be affected as it thinks necessary, to exonerate any part of the estate of the deceased from the incidence of any such payment or payments, to determine priorities as between any benefit awarded by the court to the claimant under this Act and the beneficial interests of any other person or persons in the estate of the deceased person, and to make such provision as it thinks fit as to the incidence of the whole or any part of the debts, testamentary expenses, and duty in respect of the estate of the deceased. For the purposes of this subsection the court may direct any executor or administrator to represent, or appoint any person to represent, any such party.

(7) Any order under this section, or any provision of any such order, may be made upon and subject to such terms and conditions as the court thinks fit.

(8) Nothing in this section shall affect any remedy which a claimant may have apart from this Act in respect of any promise to which this section relates, and where a claimant has any such remedy he may at his option enforce that remedy or his remedy under this section, but not both:

provided that nothing in this section shall prevent alternative claims in respect of those remedies from being made in the one action.

(9) Subsection (3) is subject to section 10(3) to (5) of the Succession (Homicide) Act 2007.

Compare: 1944 No 18 s 3

Section 3(1): replaced, on 1 January 1962, by section 2(1) of the Law Reform (Testamentary Promises) Amendment Act 1961 (1961 No 19).

Section 3(1): amended, on 26 April 2005, by section 7 of the Relationships (Statutory References) Act 2005 (2005 No 3).

Section 3(2)(b): amended, on 1 January 2008, by section 364(1) of the Property Law Act 2007 (2007 No 91).

Section 3(6): replaced, on 1 January 1962, by section 2(2) of the Law Reform (Testamentary Promises) Amendment Act 1961 (1961 No 19).

Section 3(8): inserted, on 1 January 1962, by section 2(3) of the Law Reform (Testamentary Promises) Amendment Act 1961 (1961 No 19).

Section 3(9): inserted, on 17 November 2007, by section 17 of the Succession (Homicide) Act 2007 (2007 No 95).

4 Effect of order of court

(1) Upon any order being made under this Act, the portion of the estate comprised in or affected by the order shall be held subject to the provisions of the order.

(2) Where an order is made under this Act—

(a) *[Repealed]*

(b) for all purposes—

(i) any amount which by the order is awarded to any person shall be deemed to have been bequeathed by the deceased to that person:

(ii) any property which by the order is vested in or directed to be transferred or assigned to any person shall be deemed to have been devised or bequeathed by the deceased to that person.

(3) *[Repealed]*

Section 4(2): replaced, on 1 January 1962, by section 3 of the Law Reform (Testamentary Promises) Amendment Act 1961 (1961 No 19).

Section 4(2)(a): repealed, on 1 January 1969, by section 100(1) of the Estate and Gift Duties Act 1968 (1968 No 35).

Section 4(2)(b): amended, on 24 May 1999, by section 15(1) of the Estate Duty Repeal Act 1999 (1999 No 64).

Section 4(3): repealed, on 1 January 1969, by section 100(1) of the Estate and Gift Duties Act 1968 (1968 No 35).

5 Courts to have concurrent jurisdiction

(1) Subject to the succeeding provisions of this section, the High Court, the Maori Land Court, and the Family Court shall each have jurisdiction in respect of proceedings under this Act.

(2) The Family Court shall not have jurisdiction in respect of any application under this Act if, at the date of the filing of the application, proceedings relating to the same matter have already been commenced in the High Court.

(2A) An application under this Act must be made to—

(a) the Family Court or the High Court, unless paragraph (b) applies:

(b) the Maori Land Court, if the application relates only to Maori freehold land.

(3) The court to which an application is made may refer any proceedings resulting from the application, or any question in those proceedings, to any other court referred to in subsection (2A) if it considers that the proceedings or question would be more appropriately dealt with by the other court.

(3A) The court may refer the proceedings or question on its own initiative or on application by a party to the proceedings.

(4) The High Court, upon application by any party to any proceedings pending under this Act in the Family Court or the Maori Land Court, shall order that the proceedings be removed into the High Court unless it is satisfied that the proceedings would be more appropriately dealt with in the Family Court or the Maori Land Court (as the case may be). Where the proceedings are so removed, they shall be continued in the High Court as if they had been properly and duly commenced in that court.

(5) Any appeal from a decision of the Family Court or the Maori Land Court under this Act must be made to the High Court.

(6) In this section, **Maori freehold land**—

(a) has the meaning given by section 4 of Te Ture Whenua Maori Act 1993; and

(b) includes shares in a Maori incorporation under that Act; and

(c) includes the proceeds of alienation of anything referred to in paragraph (a) or (b).

Section 5: replaced, on 1 July 1992, by section 3 of the Law Reform (Testamentary Promises) Amendment Act 1991 (1991 No 64).

Section 5(1): amended, on 6 February 2021, by section 95(1) of Te Ture Whenua Maori (Succession, Dispute Resolution, and Related Matters) Amendment Act 2020 (2020 No 51).

Section 5(2): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 5(2A): inserted, on 6 February 2021, by section 95(2) of Te Ture Whenua Maori (Succession, Dispute Resolution, and Related Matters) Amendment Act 2020 (2020 No 51).

Section 5(3): replaced, on 6 February 2021, by section 95(3) of Te Ture Whenua Maori (Succession, Dispute Resolution, and Related Matters) Amendment Act 2020 (2020 No 51).

Section 5(3A): inserted, on 6 February 2021, by section 95(3) of Te Ture Whenua Maori (Succession, Dispute Resolution, and Related Matters) Amendment Act 2020 (2020 No 51).

Section 5(4): amended, on 6 February 2021, by section 95(4) of Te Ture Whenua Maori (Succession, Dispute Resolution, and Related Matters) Amendment Act 2020 (2020 No 51).

Section 5(4): amended, on 6 February 2021, by section 95(5) of Te Ture Whenua Maori (Succession, Dispute Resolution, and Related Matters) Amendment Act 2020 (2020 No 51).

Section 5(4): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 5(5): inserted, on 6 February 2021, by section 95(6) of Te Ture Whenua Maori (Succession, Dispute Resolution, and Related Matters) Amendment Act 2020 (2020 No 51).

Section 5(6): inserted, on 6 February 2021, by section 95(6) of Te Ture Whenua Maori (Succession, Dispute Resolution, and Related Matters) Amendment Act 2020 (2020 No 51).

5A Right of appeal

(1AA) This subsection applies to a decision of the Family Court or the District Court, in proceedings under this Act, to—

(a) make or refuse to make an order; or

(b) dismiss the proceedings; or

(c) otherwise finally determine the proceedings.

(1) A party to proceedings in which there is made a decision to which subsection (1AA) applies, or any other person prejudicially affected by the decision, may appeal to the High Court against the decision.

(1A) The High Court Rules 2016 and sections 126 to 130 of the District Court Act 2016, with all necessary modifications, apply to an appeal under subsection (1) as if it were an appeal under section 124 of that Act.

(1B) On the *ex parte* application of the appellant, the Family Court or District Court (as the case requires) may order that the appellant must not be required under section 126(1) of the District Court Act 2016 to give the Registrar of the High Court security for costs.

(1C) Subsection (1B) overrides subsection (1A).

(2) *[Repealed]*

(3) *[Repealed]*

(4) *[Repealed]*

(5) The High Court or (as the case may be) the Court of Appeal may, in its discretion, rehear the whole or any part of the evidence, or may receive further evidence, if it thinks that the interests of justice so require.

Section 5A: inserted, on 1 July 1992, by section 4 of the Law Reform (Testamentary Promises) Amendment Act 1991 (1991 No 64).

Section 5A(1AA): inserted, on 24 November 2003, by section 4 of the District Courts Amendment Act 2002 (2002 No 63).

Section 5A(1AA): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 5A(1): replaced, on 24 November 2003, by section 4 of the District Courts Amendment Act 2002 (2002 No 63).

Section 5A(1A): replaced, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 5A(1B): inserted, on 24 November 2003, by section 4 of the District Courts Amendment Act 2002 (2002 No 63).

Section 5A(1B): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 5A(1C): inserted, on 24 November 2003, by section 4 of the District Courts Amendment Act 2002 (2002 No 63).

Section 5A(2): repealed, on 24 November 2003, by section 4 of the District Courts Amendment Act 2002 (2002 No 63).

Section 5A(3): repealed, on 24 November 2003, by section 4 of the District Courts Amendment Act 2002 (2002 No 63).

Section 5A(4): repealed, on 1 January 2004, by section 48(2) of the Supreme Court Act 2003 (2003 No 53).

6 Limitation of actions

No action to enforce a claim under this Act shall be maintainable unless the action is commenced within 12 months after the personal representative of the deceased took out representation:

provided that the time for commencing an action may be extended for a further period by the court or a Judge, after hearing such of the parties affected as the court or Judge thinks necessary, and this power shall extend to cases where the time for commencing an action has already expired, including cases where it expired before the commencement of this proviso; but in all such cases the application for extension shall be made before the final distribution of the estate of the deceased, and no distribution of any part of the estate made before the administrator receives notice that the application for extension has been made to the court, and after every notice (if any) of an intention to make an application under this Act has lapsed in accordance with section 48(1) of the Administration Act 1969, shall be disturbed by reason of the application for extension, or of an order made on that application, or of any action or order that is consequential thereon.

Section 6 proviso: replaced, on 26 November 1953, by section 2 of the Law Reform (Testamentary Promises) Amendment Act 1953 (1953 No 84).

Section 6 proviso: editorial change made by the PCO, on 28 April 2026, under sections 86(1) and 87(o) of the Legislation Act 2019 (2019 No 58).

Section 6 proviso: amended, on 1 January 1962, by section 4 of the Law Reform (Testamentary Promises) Amendment Act 1961 (1961 No 19).

7 Repeal and savings

(1) This Act is in substitution for section 3 of the Law Reform Act 1944, and that section is hereby accordingly repealed.

(2) Where before the passing of this Act any action has been commenced under the said section 3 and the action is pending or in progress on the passing of this Act, the action may be continued and completed as if this Act had been passed before the action was commenced. Without limiting the generality of the foregoing provisions of this subsection, it is hereby declared that if in any action so commenced as aforesaid any appeal has been brought before the passing of this Act and has not been finally determined, or the time for bringing any appeal has not expired before the passing of this Act, the action shall for the purposes of this subsection be deemed to be pending.

Reprints notes

1 General

This is a reprint of the Law Reform (Testamentary Promises) Act 1949 that incorporates all the amendments to that Act as at the date of the last amendment to it.

2 Legal status

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 Editorial and format changes

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also http://www.pco.parliament.govt.nz/editorial-conventions/.

4 Amendments incorporated in this reprint

Te Ture Whenua Maori (Succession, Dispute Resolution, and Related Matters) Amendment Act 2020 (2020 No 51): section 95

Trusts Act 2019 (2019 No 38): section 161

District Court Act 2016 (2016 No 49): section 261

Succession (Homicide) Act 2007 (2007 No 95): section 17

Property Law Act 2007 (2007 No 91): section 364(1)

Relationships (Statutory References) Act 2005 (2005 No 3): section 7

Supreme Court Act 2003 (2003 No 53): section 48(2)

District Courts Amendment Act 2002 (2002 No 63): section 4

Estate Duty Repeal Act 1999 (1999 No 64): section 15(1)

Law Reform (Testamentary Promises) Amendment Act 1991 (1991 No 64)

Estate and Gift Duties Act 1968 (1968 No 35): section 100(1)

Law Reform (Testamentary Promises) Amendment Act 1961 (1961 No 19)

Law Reform (Testamentary Promises) Amendment Act 1953 (1953 No 84)

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