

**Reprint  
as at 12 November 2018**



## **Succession (Homicide) Act 2007**

Public Act      2007 No 95  
Date of assent      17 October 2007  
Commencement      see section 2

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**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.**

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## 1 Title

This Act is the Succession (Homicide) Act 2007.

## 2 Commencement

This Act comes into force on the day that is 1 month after the date on which this Act receives the Royal assent.

## Part 1 Preliminary provisions

### 3 Purpose

The purpose of this Act is to codify the law that prevents a person (the **killer**) who kills another person (the **victim**) by committing homicide from benefiting as a result of the victim's death from—

- (a) the victim's estate; or
- (b) any other property arrangement.

### 4 Interpretation

(1) In this Act, unless the context otherwise requires,—

**assisted suicide**—

- (a) means the killing of a person by another person directly or indirectly if, immediately before death, the deceased asked the other person to help them to commit suicide; but
- (b) does not include a killing where the deceased formed the wish to commit suicide, or resolved to commit suicide, or acted on that wish or resolve, as a consequence of any form of persuasion by the other person

**homicide** means the killing of a person or a child who has not become a person, by another person, intentionally or recklessly by any means that would be an offence under New Zealand law, whether done in New Zealand or elsewhere, but does not include—

- (a) a killing caused by negligent act or omission; or
- (b) infanticide under section 178 of the Crimes Act 1961; or
- (c) a killing of a person by another in pursuance of a suicide pact; or
- (d) an assisted suicide

**killer** means a person who kills a person or a child who has not become a person in any manner and in any circumstances that the person is guilty, either alone or with another person or persons, of the homicide of the person or child who has not become a person or would be so guilty if the killing had been done in New Zealand

**non-probate assets**, in relation to any victim, means all property passing on the death of the victim because of any of the following transactions:

- (a) a nomination as defined in section 68A of the Administration Act 1969;
- (b) gifts that the victim made in contemplation of death;
- (c) trusts settled by the victim that were revocable by the victim in his or her lifetime;
- (d) beneficial powers of appointment that were exercisable by the victim in his or her lifetime;
- (e) joint tenancies held by the victim and any other person

**person** means a human being

**property** means everything that is capable of being owned, whether it is real or personal property, and whether it is tangible or intangible property, and includes any estate or interest in property

**suicide pact** has the meaning given in section 180(3) of the Crimes Act 1961

**victim** means a person, or a child that has not become a person, who is killed by a killer

**will** includes a codicil.

- (2) For the purposes of this Act, an unborn child becomes a person in the circumstances described in section 159 of the Crimes Act 1961.

## 5 Effect and application

- (1) This Act replaces the rules of law, equity, and public policy that prevent a killer from receiving, becoming entitled to, or claiming interests in property as a result of the death of the killer's victim.
- (2) This Act applies to interests in and claims against property resulting from the death of a victim after the commencement of this Act, but does not affect—

- (a) any interest in or claim against property that is the subject of a proceeding commenced before the commencement of this Act, whether or not judgment has been delivered in that proceeding or an appeal against judgment was commenced before that time; or
  - (b) any interest in property a person (other than a killer) acquired for value; or
  - (c) the entitlement of any person under a contract.
- (3) Subsection (2) overrides subsection (1).

## **6 Act binds the Crown**

This Act binds the Crown.

## **Part 2**

### **Effect of homicide on rights of succession**

#### *Disentitlements of killers to property*

## **7 Disentitlement of killers under will or intestacy**

- (1) A killer is not entitled to any interest in property arising under a will of the killer's victim.
- (2) A killer is not entitled to any interest in property arising on the intestacy, or partial intestacy, of the killer's victim.
- (3) Subject to any express testamentary direction to the contrary, any interest in property that a killer is not entitled to under subsection (1) or subsection (2) is to pass or be distributed as if the killer had died before the killer's victim.
- (4) Subsections (1) and (3) are subject to section 10(3) to (5).

## **8 Disentitlement of killer to victim's non-probate assets**

- (1) A killer is not entitled to any property interest in any non-probate assets of the killer's victim which, but for this subsection, would have passed to the killer on the death of the victim.
- (2) Any property interest that a killer is not entitled to under subsection (1) is to pass or be distributed as if the killer had died before the victim.
- (3) Despite subsection (2), property that is owned in joint tenancy by the victim, the victim's killer, and any other person (if any) devolves at the death of the victim as if the property were owned by each of them as tenants in common in equal shares.

## **9 Disentitlement to apply under Family Protection Act 1955**

A killer is not entitled to apply under the Family Protection Act 1955 for provision out of the estate of the killer's victim.

**10 Restriction of killer's claims as to matrimonial property, testamentary promises, and restitution**

- (1) A killer who has a valid claim against the estate of a victim of the killer under the Matrimonial Property Act 1963 or the Property (Relationships) Act 1976 or a valid claim for restitution for economic benefits conferred on the killer's victim is entitled in respect of that claim only to a benefit calculated in accordance with subsection (2).
- (2) The benefit referred to in subsection (1) must be calculated to ensure that—
  - (a) the killer is not deprived of the benefit to which the killer is entitled for the services or other economic benefits he or she provided to the killer's victim; but
  - (b) the killer's benefit is not made more certain or more valuable as a result of the death of the killer's victim.
- (3) A killer who is not entitled under section 7 to any interest in property arising under a will of the killer's victim—
  - (a) may make an application under the Law Reform (Testamentary Promises) Act 1949 in respect of the victim's estate; and
  - (b) must be treated for the purposes of that application as if the victim had failed to make testamentary provision for the killer.
- (4) A killer who has a valid claim against the estate of a victim of the killer under the Law Reform (Testamentary Promises) Act 1949 is entitled in respect of that claim only to a benefit calculated in accordance with subsection (5).
- (5) The benefit referred to in subsection (4) must be calculated to ensure that the killer's benefit is no more certain or more valuable than the killer would have been entitled to if the victim of the killer had continued to live for the period reasonably expected before the victim was killed.

**11 Disentitlement of killer to enhanced benefits generally**

- (1) This section applies only in respect of property of a victim that is not—
  - (a) within the victim's estate; or
  - (b) a non-probate asset of the victim.
- (2) A killer whose interest in or claim against property to which this section applies is affected by the death of the killer's victim is not entitled to any more certain or more valuable interest in the property as a result of the death of the victim than the killer would otherwise have been entitled to.
- (3) Without limiting subsection (2), a killer is not entitled to benefit in respect of any property to which this section applies as a result of the death of the killer's victim if—
  - (a) the killing prevented the birth of the victim; or

- (b) the killing altered the order in which it could reasonably have been expected that the killer and the victim would have died; or
- (c) the killing prevented the victim from reaching any particular age or satisfying any other condition; or
- (d) the killing reduced or closed the membership of a class of beneficiaries that included the victim; or
- (e) the killing shortened the period during which the victim could reasonably have been expected to possess an interest in property in which the killer has an interest in remainder.

## **12 Applications by victim's estate under section 88(2) of Property (Relationships) Act 1976**

When applying section 88(2) of the Property (Relationships) Act 1976, the court must treat the refusal of leave under that provision as causing a serious injustice if the refusal of leave would allow the killer to retain a more certain or more valuable interest in the property.

## **13 Caveat against dealing with land**

- (1) If an interested person claims that an owner of an undivided estate or interest in land as a joint tenant with a victim is the killer of that victim, the interested person may lodge a caveat in accordance with section 138 of the Land Transfer Act 2017 in respect of that estate or interest.
- (2) For as long as a caveat under this section remains in force, the Registrar-General of Land must not register a transmission on survivorship to the alleged killer, or the alleged killer and any other joint tenant, of any estate or interest affected by the caveat.
- (3) The provisions of the Land Transfer Act 2017, other than section 140(1), apply to a caveat lodged under this section.
- (4) Sections 140(2) and (3) and 141 of the Land Transfer Act 2017 apply, with any necessary modifications, in respect of a caveat lodged under this section.

Section 13(1): amended, on 12 November 2018, by section 250 of the Land Transfer Act 2017 (2017 No 30).

Section 13(3): amended, on 12 November 2018, by section 250 of the Land Transfer Act 2017 (2017 No 30).

Section 13(4): amended, on 12 November 2018, by section 250 of the Land Transfer Act 2017 (2017 No 30).

## **14 Evidential effect of conviction in New Zealand**

- (1) The conviction in New Zealand of a person for the homicide of another person or a child that has not become a person is conclusive evidence for the purposes of this Act that the person is guilty of that homicide, unless that conviction has been quashed.

- (2) A certificate issued under section 146A of the Sentencing Act 2002 is conclusive evidence that a person convicted of an offence of unlawfully killing another person or a child that has not become a person is for the purposes of this Act guilty of the homicide of that other person or child that has not become a person.
- (3) Subsection (2) is subject to subsection (1).

**15 Evidential effect of acquittal in New Zealand**

The acquittal in New Zealand of a person on the grounds of that person's insanity in respect of the homicide of another person or a child that has not become a person is conclusive evidence for the purposes of this Act that the person is not guilty of that homicide.

**16 Evidence if no criminal prosecution or unsuccessful prosecution in New Zealand**

- (1) This section applies if,—
- (a) in any proceedings in which the application of this Act is in issue, any party alleges that another person is guilty of the homicide of a person or a child that has not become a person; and
  - (b) the person who is alleged to be guilty of the homicide of another person or child that has not become a person has—
    - (i) not been prosecuted in New Zealand in respect of that homicide, whether or not the person has been prosecuted, convicted, or acquitted elsewhere; or
    - (ii) been prosecuted in New Zealand in respect of that homicide but has been acquitted other than on the grounds of insanity or the prosecution has been stayed or withdrawn, whether or not the person has been prosecuted, convicted, or acquitted elsewhere.
- (2) If this section applies,—
- (a) the court hearing the proceedings may decide for the purposes of this Act whether the killing of a person or a child that has not become a person has taken place and, if so, whether, if the alleged killer had been prosecuted in New Zealand, he or she—
    - (i) would be guilty of the homicide of that person or child that has not become a person; or
    - (ii) would by reason of insanity not be guilty of the homicide of that person or child that has not become a person:
  - (b) a person who alleges that another person is guilty of homicide for the purposes of this Act must satisfy the court of that fact on the balance of probabilities:

- (c) a person who alleges that he or she is not guilty of the homicide for the purposes of this Act by reason of insanity must satisfy the court of that fact on the balance of probabilities:
- (d) the conviction elsewhere than in New Zealand of a person in respect of homicide is, for the purposes of this Act, admissible evidence as to whether the person is guilty or not guilty of the homicide and is to be given any weight that the court determines.

*Amendments to other enactments*

**17 Amendments to other enactments**

The enactments specified in the Schedule are amended in the manner set out in the Schedule.

## Schedule Enactments amended

s 17

### Administration Act 1969 (1969 No 52)

Insert after section 5:

#### **5A Killer not competent to be granted administration**

A person who is a killer of a victim for the purposes of the Succession (Homicide) Act 2007 or who is awaiting trial for an offence of homicide (within the meaning of that Act) is not competent to be granted and must not be granted—

- (a) probate of the victim's will; or
- (b) letters of administration of the estate of the victim, with or without a will annexed.

Section 47(1): insert after paragraph (e):

()

(ea) under the Succession (Homicide) Act 2007:

Section 47: add:

- (5) Subsection (4) does not apply to protect an administrator who, at the time of making a distribution, had reason to suspect that the death of the deceased was a homicide and the person to whom the distribution was made was a killer of the deceased.

### Law Reform (Testamentary Promises) Act 1949 (1949 No 33)

Section 3: add:

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

### Proceeds of Crime Act 1991 (1991 No 120)

Section 24: add as subsection (2):

- (2) Despite subsection (1), sections 25 to 29 do not apply to interests in or claims against property that a person who is a killer under the Succession (Homicide) Act 2007 is not entitled to claim or receive because of that Act.

### Property (Relationships) Act 1976 (1976 No 166)

Section 88: add:

- (4) Subsection (2) is subject to section 12 of the Succession (Homicide) Act 2007.

### Sentencing Act 2002 (2002 No 9)

Insert after section 146:

**146A A certificate of conviction for succession purposes**

- (1) On or at any time after sentencing a person for an offence against any Act of unlawfully killing another person or child that has not become a person, a court may certify that for the purposes of the Succession (Homicide) Act 2007 the person convicted is guilty of homicide of that other person or child that has not become a person.
- (2) A court may issue a certificate under this section on the application of the informant, any interested person, or on its own initiative.

## **Reprints notes**

### **1    *General***

This is a reprint of the Succession (Homicide) Act 2007 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***

Land Transfer Act 2017 (2017 No 30): section 250