



Wills, Probate & Older Client Services Case Study

The Wills, Probate & Older Client Services team at Mander Hadley were recently consulted by a family about a Will prepared for their deceased mother by a Will Writer. It was Mum's wish for her home to be sold and for the proceeds to pass to her family, and for the rest of her estate, which when the Will was made consisted of fairly modest savings, to go to charities. When Mum died, her house had already been sold a few years before and Mum had moved into residential care. The sale proceeds from her home had been added to Mum's savings. This meant that the whole estate passed to charities with the family receiving nothing.

The preparation of the Will had gone through a process of several drafts being produced to Mum for her approval prior to signing. The family consulted Adrian Austin Crowe of Mander Hadley's Dispute Resolution team. A copy of the Will Writer's file was obtained and after detailed examination of the contents it was discovered vital words appearing in drafts of the Will (which Mum had approved) had been left out of the final version which Mum had signed. Those words would have prevented the house sale proceeds from passing to the charities and would have saved them for distribution amongst members of the family.

The problem was that the signed Will still held good; the house sale proceeds would have to be paid to the charities, and the family were most likely not to receive anything. The situation was explained to the charities and although they were sympathetic, the charities were limited by relevant legislation as to what they could do; they could not just give up their legal entitlement under the Will.

Adrian Austin Crowe comments "The charities were unable to surrender their legacy under the Will so as to give the sale proceeds of the house to the family. The only way forward was for an application to be made to Court for the Will to be rectified on the grounds that it contained a clerical error because the vital words appeared in the draft Will but not the signed version".

The Will Writer was approached about this but would not support the application, arguing that the signed Will was the correct version. Notwithstanding the Will Writer's opinion, an application for rectification was made to the Court.

Adrian Austin Crowe again "These rectification applications are not easy. The Court has to be convinced that the person making the Will would have corrected the matter if he or she had been aware of the error". Happily for the family, after detailed consideration and explanation a judge consented to the application and ordered the Will be rectified to correct the Will Writer's error. This meant that the family received the sale proceeds from Mum's home, as Mum intended. The Will Writer now faces a claim for recovery of the losses incurred from the work in making the application, which otherwise the family would have to pay for out of their restored inheritance.

The moral of these events is it is best to take specialist professional advice, both when having a Will prepared and if a problem is encountered when you act as executor.

For more information please
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