

Rectifying Omissions In Wills

Risk Management Topic:

Wills and Estates



Elissa Baxter
Chief Legal Officer

The case of *Redenbach v Norris Bros Pty Ltd* [2025] NSWSC 765 highlights the need for careful drafting of gift provisions in wills. The case involved the estate of Ronald James Norris, a farmer with various properties and water licences in New South Wales. The dispute focused on the testamentary disposition of the property *Cocos*, near Lake Cargelligo, and its associated water access licence WAL 1670, which was omitted from the will's specific gifts to the testator's nephew, Brian.

The executors of Mr Norris' estate made an application for rectification of the will dated 8 February 2018, which they said did not accurately reflect the testator's intentions regarding the inclusion of a water access licence along with the *Cocos* property, the water licence being crucial for the effective use of that property.

Section 27 of the *Succession Act 2006* (NSW) allows the court to rectify a will if it does not carry out the testator's intentions due to clerical errors or failure to give effect to instructions.

Applications must be made within 12 months of the testator's death, but the court may extend this period if necessary and if the final distribution of the estate has not been made. An extension was granted in this case.

The court reviewed principles from prior cases, emphasising that rectification requires clear and convincing proof of the testator's intentions and that the error must be connected to the will's failure to carry out those intentions.

The testator's solicitor, Mr. Olsen, who prepared the will and had a longstanding relationship with the Norris family, gave evidence that the omission of WAL 1670 from the will was an oversight. He recalled that Ronald intended for Brian to receive *Cocos* and the associated water licence, supported by handwritten notes and instructions made in Ronald's presence. The court made orders to rectify the will to accord with the testator's intentions.

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Risk Management tips

1. Specific gifts require detailed instructions. Ownership of the specific item to be gifted should be confirmed (a title search in respect of real property and a water access licence). The precise nature of the gift should be confirmed and if instructed to do so, the drafting should cover the possibility that the subject of the gift is no longer in the willmaker's estate at the date of death.
2. Instructions for wills should be retained with the will to assist with any later rectification application in relation to the will.
3. If a rectification application is required, it is preferable and more cost effective to deal with it as part of the probate application and to make that application within the limitation period.
4. If it appears a rectification application may need to be made outside the limitation period, the executor should defer the distribution of the specific gift and the final distribution of the estate until the rectification issue is resolved.