

Reducing Risks in Will Drafting – Practical Lessons

Risk management topic:

Wills and Estates



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Meticulous attention to detail is a key requirement of legal practice and it is never more important than when drafting a will.

Even the simplest of errors when drafting a will can result in a claim against a solicitor for the costs incurred by a testator's estate or an intended beneficiary for rectification of a defectively drafted will.

1. Incorrect percentage share



In a recent claim, a solicitor mistakenly recorded the percentage share of the residue of an estate bequeathed to a beneficiary. Although the testator's instructions were accurately documented in a file note prepared by the solicitor, a clerical error occurred when the will was typed by administrative staff. The incorrect percentage share recorded in the will was not identified by the solicitor.

2. Failure to confirm property ownership



Another claim involved a solicitor failing to confirm ownership of property included in the will, mistakenly describing the property as being held by the testator and her daughter as tenants in common rather than joint tenants. The solicitor did not obtain instructions to undertake a title search to confirm ownership of the property.

3. Not updating a will



In a third claim, an updated will prepared by a solicitor omitted a beneficiary and gift of property which had been included in an earlier will of the testator. The testator had not provided any instructions to the solicitor to remove the beneficiary or gift of property in the updated will. The error arose from a misunderstanding of the family relationships.



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Adopting simple, yet effective, risk management practices can help reduce the risk of errors occurring in drafting wills.

- Obtain clear, direct instructions from the testator.
- Maintain detailed file notes of instructions and any clarifications sought during the drafting process.
- Verify the ownership of property and ensure that ownership is correctly reflected in the will. Inform the testator if property is not owned as assumed by the testator and provide any further advice, such as in relation to the severance of joint tenancy, to achieve the testator's intention.
- Avoid over reliance on templates and ensure those used in will preparation are regularly reviewed and updated to ensure compliance with legislative requirements.
- Carefully review the draft will for any errors or ambiguities to ensure that it accurately reflects the testator's instructions. Check for simple clerical mistakes such as numerical or typographical errors.
- Before execution, conduct a final review of the will with the testator to confirm accuracy and completeness.

Taking the time to draft a will without ambiguity or contradiction significantly reduces the risk of costly disputes or negligence claims against the solicitor.