

Doing a good turn can turn into a nightmare

In the 2011 edition of the Law Society Probate Practitioners Handbook, Professor Lesley King writes: 'Personal Representatives dealing with Estates have an obligation to distribute to those entitled and will incur personal liability if they omit someone.' She states that '...Personal Representatives should be very cautious about accepting an assurance from one part of a family that 'X died without children'. It is necessary to check or risk distributing assets wrongly.'

It is estimated 40% of family trees are found to have omissions or mistakes.

Chris Berry comments "Whilst at first sight this statistic may seem surprising, the complexity of family relationships can often mean family members simply do not know of each others existence, either because they have become estranged or the extent of their family tree has become lost or unknown in the mists of time. "

Case study:

In one reported case a friend was administering an intestate estate on behalf of the Deceased's brother, Mr Smith.

Mr Smith had supplied the friend with a family tree, signing a statutory declaration to confirm that the information he supplied was correct. In Mr Smith's family tree, the Deceased was shown to have had six siblings with one of the siblings, Maria, having predeceased without issue.

Since the friend had extracted a Power of Attorney Grant under their name, they would be liable for future claims that could emerge at a later date.

The friend wisely sought the help of professionals. Further research identified that the Deceased in fact had eight siblings with the additional two still alive. We also found that the Deceased's sister, Maria, who Mr Smith had identified as being deceased without issue, actually had two children both of whom were still alive and therefore entitled to her share of the estate.

Benign or malicious?

Clearly, there can be various factors that influence the accuracy of information supplied about the extent of family members. In some cases this might be down to innocent mistakes, but unfortunately, in other cases financial gain may be the motive.

Chris Berry comments "I suspect that many of us whose parents came from large families or those who have a large number of siblings, potentially spread across the country or around the world, would struggle to name all of their 1st cousins once removed. Could we name the first wife of an uncle and their children and grandchildren? In many cases probably not, yet these relatives could be entitled to a share of an estate under the rules of intestacy. "

Always be on guard when you encounter printed family trees provided by a relative with a keen interest in amateur genealogy. This scenario has become increasingly prevalent with the growing interest in genealogy in recent years. Whilst these family trees can provide a useful starting point for a probate practitioner who wants a rough idea of how the estate will be distributed on intestacy, our experience has shown that amateur genealogical research must be professionally checked to protect the PR from future claims. More often than not, innocent mistakes creep into the tree due to

misunderstandings about how to systematically search the records or how to spot gaps which suggest further research is required.

Potential risks

Some of the most common errors or misconceptions we come across during the course of checking family trees or claims for entitlement include:

- previous marriages being missed out and therefore half blood issue of those marriages being overlooked.
- individuals of the same surname being identified as relatives, when in fact they turn out to be unrelated.
- an assumption that blood related children adopted out of a family are entitled to a share of the estate when in fact the distribution laws exclude adopted out children, in most cases.
- uncles and aunts of the Deceased being missed out because of the passage of time (many will have been born during the early part of the 20th century) or a belief that an uncle an aunt died without issue, when our searches reveal otherwise.
- siblings believing that their nieces/nephews are not entitled to a share of the estate because the previously entitled parent of the nieces/nephews has died.

Solutions

So what are some of the options for protecting the Personal Representative against incorrect distribution given the prevalence of such errors and omissions in family tree information?

Professor Lesley King states in the Probate Practitioners Handbook that personal indemnities taken from known beneficiaries are of doubtful value from a risk management point of view. Certainly, unknown beneficiaries who come forward at a later date to make a claim, might argue that the Personal Representative had acted negligently by not carrying out professional searches or verification, given the technological resources and skills available to a PR by engaging a professional genealogist.

On the same basis, it is clear from the example given above, that relying on a Statutory Declaration carries a similar risk.

Another option would be to take out missing beneficiary indemnity insurance. Only a limited number of insurance companies offer this protection, but the usual condition they apply is that professional genealogists have verified family tree information provided by relatives and attempted to trace any missing beneficiaries.

Perhaps the most effective solution in these circumstances is to ask a professional genealogist to check the family tree information. A professional opinion can be given to identify any potential gaps or inaccuracies in the family tree provided, that may require further investigation. Alternatively, a full verification of the existing family tree can be carried out, allowing the PR to obtain Missing Beneficiary Indemnity Insurance.

The task of being a Professional Representative is an important role to be undertaken. With that role comes significant obligations. The Personal Representative should think very carefully in seeking assistance with dealing with an Estate by appointing a Solicitor.

Chris Berry reflects that the task of administration in even the simplest Estates can turn into a financial nightmare for the unsuspecting Personal Representatives. Once the Estate has been

distributed to the Beneficiaries the chances of recouping such monies are slim should an unknown relative emerge and stake their rightful claim. There is little sympathy for the Personal Representatives when such a situation arises and the Personal Representatives then face the unenviable task of having to resort to their own assets and finances to settle the outstanding claims.

A Personal Representative really needs to think very carefully in dealing with an Estate without the benefit of a Probate Solicitor.