

Risk video bites – Attention to detail in wills and estates

Presenter: Heather Hibberd

The most mistakes made in the last five years by wills and estates lawyers involved administering the estate. You might think that this is the easy part of the job. But unfortunately, it is not, and it was also the second most costly claims area.

The mistakes are many and varied and sadly, keep reoccurring. Many of them relate to simple errors because of no focus on the detail, for example:

- not distributing in accordance with the terms of the will
- sending the money overseas in the wrong currency
- delaying in distributing the estate
- not investing the money or paying all of the debts of the estate before final distribution

Two of the most expensive closed claims over this time also suffered from no focus on the detail and involved the inadvertent sale of share portfolios.

In one matter the practitioner had been given oral instructions in a meeting with the executors that they wanted the shares transferred to the two beneficiaries/executors.

He had a file note of his instructions.

His very experienced secretary prepared the three forms for the three different sets of shares for the two executors to sign. The forms were headed

'One off trade form for non-Commonwealth bank or Commsec clients'

Two thirds of the way down page three of the form was a reference to '**number of shares to be sold**' and on the last page in the fine print above the place for the shareholder to sign, at bullet point 2, was the wording

- *instruct Commsec to sell the above-mentioned securities at the prevailing market price as soon as practicable after Commsec receives this form.*

The letter sent with the forms didn't spell out these were sale forms. Neither the practitioner nor the clients picked up that the forms authorised the sale of the shares.

The shares were of course sold!

After the event, the practitioner said of his secretary who prepared the letter and forms:

'she had a lifetime of working in legal offices and on probate files and the quality of her work is first class. She is very meticulous and works with little supervision. A mistake like this has never happened before.'

While it was the secretary who prepared the forms and the letter to send to the executors the ultimate responsibility rested with the practitioner. Just because you trust your capable secretary/clerk/solicitor doesn't mean you don't need checks and balances and good communication systems. We are all busy and we are all human. Good communication, systems and supervision protects everyone.

In another matter the practitioner was administering a substantial estate with assets which included both cash and shares. Some of these assets were held in a wrap account with a financial institution.

The executor expressly instructed the practitioner to withdraw all cash and transfer all shares in specie to the beneficiaries.

Unfortunately, the practitioner failed to realise that shares and cash were tied in a single wrap account. Documents in his possession had alerted him to this but had gone unnoticed.

The practitioner had the executor sign a withdrawal form and sent it to the financial institution with a request to *'please proceed with closing the accounts in the deceased's name and remit balance by cheque payable to the estate to me'*.

Acting on the account closure request the institution redeemed the cash accounts and sold all the shares, crystallising a large capital gains tax liability for the estate.

The executor insisted the practitioner re-purchase the shares for the estate and distribute them to the beneficiaries in specie as previously instructed and compensate the estate for the CGT liability and subsequent re-purchase costs.

This claim is also an excellent illustration of the importance of paying close attention to detail as to the manner in which estate assets are held, and the instructions for their realisation and distribution.

Is it time to review how you manage your estate files to make sure all the details are thought about and a process for checking is embedded into the administration of each unique estate file?

It is a good discussion to have at your next staff meeting.

Thanks for watching.