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LEGAL SERVICES

Where do you store your Will?

(Don't use the buffet!)

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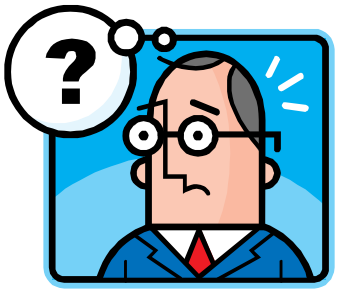
In February this year a judge in the NSW Supreme Court spent eight days hearing evidence and submissions concerning the effect of a missing Will. Ed Wardie had made a Will in November 1992 which he'd wisely decided to entrust to his solicitor to retain. When the solicitor retired in 2005, he sent the Will to Mr. Wardie with the suggestion that it be kept in a safe place.



The Court found that Mr. Wardie put the Will in a piece of furniture called a buffet, for which he had the only key. When he died in July 2009 the buffet was searched but the original Will was not found.

Thankfully the solicitor had kept a copy. So the question wasn't what the Will said, which was an issue in the case involving Brett Whiteley's Will, but whether the absence of the original suggested that Ed Wardie had destroyed the Will.

The moral to this case? Store Wills very carefully, and keep a copy elsewhere.

A REASON TO PROPERLY DRAFT WILLS

Najla Fahd owned three quarters of their home in Granville. One of her seven children, Martin, owned the other one quarter share. Najla made a Will which gave one quarter of the proceeds from the sale of her home to Martin and divided the balance between her seven children, including Martin.

One of her other children argued that the gift of one quarter of the proceeds from the sale of the home to Martin was satisfied by Martin's existing one quarter share in the property. That way all seven children shared the deceased's interest in the home equally and otherwise Martin would receive 36% of her mother's ¾ share and her other children would only receive about 11%. That outcome, it was said, was contrary to the deceased's expressed wish of equality between her children.

The Supreme Court found that, in its context, the Will was properly understood to mean that Martin would receive 36% of his mother's ¾ share, so that his share in the Granville home was 52% overall.

The moral is that badly drawn wills can lead to costly court cases and long lasting family friction.

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THE COST OF INFORMAL WILLS

Floris Verzyden made a Will in May 2004. Then on 2 December 2011, whilst in hospital, he made notes on a hospital form. He signed the form as did another person who was present at the time.

The note was addressed to his solicitor and stated that he wished to make changes to his Will. Floris died two days later but nothing had occurred in the interim to convert the note into a proper Will. The questions for the court were whether the note replaced the 2004 Will, whether it altered it, or whether it had no effect at all. Different persons benefitted in each situation.

Although the note was drawn as instructions and it was signed by the deceased before only one witness, the court has powers to dispense with the requirement to sign before two witnesses. Ultimately the court was satisfied that that power should be exercised, and the note was treated as altering the Will like a codicil – a very expensive codicil mind you.

BE CAREFUL WITH NAMES, PT 2

Taras Bodlak made a Will in 1996. He gave most of his estate to nine different organisations. After he died in 2010, there were considerable problems with the administration of his estate. This was for various reasons including ambiguities in the descriptions of intended beneficiaries, the failure to specify the purpose to which the gift to an organisation was to be applied and the failure of six named organisations to be legal entities.

There was a mediation between the executor and organisations claiming to be the intended beneficiary. Agreement was reached and there was an application made to the Supreme Court for orders approving the distribution of the estate. A hearing of the application was followed by the Court deciding it would resolve the problems cy pres (meaning 'as nearly as possible').

Accordingly, three years after Taras Bodlock's death, the executor was advised by the Court as to the correct meaning of the Will and was able to take steps to distribute the estate. Three years and unknown hundreds of thousands dollars later! (Why would the costs be this much? In the Supreme Court there were 11 different solicitors and 5 additional barristers representing the interests of the various potential beneficiaries.)