

WHAT TO DO ABOUT MISSING BENEFICIARIES

Around 300,000 people die intestate in the United Kingdom each year. This is a statistic with which many Solicitors are familiar. The majority of these cases are satisfactorily resolved with appropriate beneficiaries receiving a fair distribution from the estate of the person who has died ("the deceased"). However there are increasing numbers of cases that result in claims from missing beneficiaries.

Now in its fourth series, the popular BBC1 documentary Heir Hunters, has brought the issue of intestacy into sharp focus. Judging by the record breaking viewing figures, this programme appears to have struck a chord with a wide and very interested public. This has promoted more people to ask their Solicitors about how to protect themselves from long lost or unknown relatives laying claim to a recent inheritance, or even to their own estate, once they have died.

SOLUTIONS

The more traditional solutions to this question include applying to the Courts to obtain an appropriate order from the Court known as a Benjamin Order, or obtaining indemnities from known beneficiaries to reimburse the estate of the deceased should a missing beneficiary appear. However, these options are not without their drawbacks.

Seeking indemnities from known beneficiaries is less favoured by most Executors, given the potential risk of these beneficiaries becoming bankrupt or dying. Added to which, keeping large reserves indefinitely can add complexity to the task of administering an estate making it much more difficult for Solicitors to wind up their clients' estates in a timely manner.

INSURANCE

Judged against these options, missing beneficiaries' insurance offers the advantage of increasing speed and surety and reducing costs. The insurance will cover both Executors and beneficiaries against any future claims on the estate by missing beneficiaries, as well as any interest payable on the estate.

No doubt these benefits explain the rise in numbers of Probate Solicitors who are turning to insurance to help them protect both their clients and, if they are administrators, themselves, against such claims.

GENEALOGIST

In recent years, insurers have become much more cautious and are no longer willing to accept risks without research being undertaken by a professional genealogist. A Probate genealogist traces missing heirs to estates. The Probate genealogist will use many records to locate the missing person, wherever possible, including birth, marriage and death records, census returns and the electoral roll. A professional genealogist can often start work when provided with minimal information. This is usually in the form of a death certificate which enables the professional genealogist to begin reconstructing a family tree; given that it provides the name (and maiden surname of a married woman) and date and place of birth. Using these details, the Probate genealogist will be able to obtain the birth certificate and from there develop the entire family tree until the entitled individuals are located.

At other times a Probate genealogist might be approached by clients who need to locate a named individual remembered in the Will of their deceased. Frequently these Wills are written many years before the death of the person who has made the Will and a beneficiary may have moved many times since that date.

If an individual or a line of a family cannot be traced then the Probate genealogist reports are usually accepted by insurers in order to obtain the missing beneficiary indemnity insurance to protect the Executors or Personal Representatives against any claims being brought against them in the future.

Missing beneficiary indemnity insurance allows the Administrator to distribute with confidence.

Recent research conducted by Certainty, the organisation behind the establishment of this country's first National Will Register, and endorsed by the Law Society, revealed that 67% of people in the UK do not know where their parent's Wills are kept. Nigel McGinnity, Chief Executive of Certainty says, "Certainty receives calls everyday from the general public and Solicitors who can't find Wills they know exist, which we then trace." While the issue of lost Wills is being addressed by Certainty, the quantity of lost Wills implied by the research suggests that the current steady stream of missing beneficiaries turning up to state their claims is set to increase still further – at least for the foreseeable future. So, whether its missing Wills or the heir hunters effect, it seems a fair assumption that the growing trend towards the use of missing beneficiaries insurance will only continue its upwards trajectory, both in terms of frequency and volume.

FAMILY TREES

In addition to tracing missing heirs, Probate genealogists are also frequently asked to check family trees prepared by family members. Often, as expected, the Probate genealogist returns the same information that was originally provided. However, the value of a professional check resides in the Personal Representatives being able to proceed towards distribution with far greater confidence. There are of course instances where the Probate genealogist uncovers a potential heir who was unknown to the family, or proves that a person previously believed to be entitled is in fact not relevant. Common mistakes in family trees prepared by family members include not confirming an adoption, including half blood relatives and missing illegitimate children. All of these mistakes could be avoided by proper and thorough checks by a qualified Probate genealogist who could save the Personal Representatives from a potential misdistribution.

UP TO DATE WILL

As always, we would stress the importance of you keeping your Will up to date. There is every probability that your Will might make a gift to an individual with whom you have lost touch. At the time when you made your Will, you may have thought about old friends and acquaintances, perhaps even former neighbours and colleagues. It would be natural for you to remember such persons in your Will even if you are no longer in contact with them. If this is the case however, you should take appropriate steps to locate your proposed beneficiary during your lifetime. If for whatever reason this is not possible or desired, then you should gather as much information as possible included in a separate attachment to be held with your Will to assist in searches after your death.

Failing this, you should perhaps consider including a clause within your Will stipulating that if the bequest should fail if the beneficiary is not found within say one year of the date of your death in order to avoid having to seek missing beneficiary indemnity insurance cover or a Court direction. Estranged family members fall within this category. It is not at all unusual for individuals to lose contact with close kin. The person making their Will may regard their Will as a vehicle for achieving a kind of reconciliation. Again, you should provide as much information as possible to assist in locating such kin after your death.

HITCHES

If a person dies without making a Will and without leaving any immediate family, finalising the details of the persons entitled to benefit from the estate is unlikely to be straightforward. The person who has died without making a Will is known as the intestate. It will be necessary for the Personal Representatives of the intestate to research the intestate's paternal and maternal family trees. The chances of all potentially entitled persons being in contact with the intestate at the time of death would seem to be remote. Sometimes the intestate may be in touch with all members on one side of the family but not the other. In any event, identifying and locating the descendants of all uncles and aunts on both sides can be a sizeable task.

Whilst this is good news for Probate genealogists, it does cause extra work for the Personal Representatives and their advisers and becomes an extra cost in the estate administration. This could have been avoided had a Will been made in the first place. It also means, at least in our own experience, that a distribution is made to a large number of people including amongst them some persons who may not have met or even heard of the intestate. Of course, as total strangers, these kin would not have been named in a Will, but nevertheless they are entitled along with the others whom the deceased person did know, as the law may make no distinction.

ACTION

As always, we would strongly advise you to make your Will. A person who has decided to approach a professional adviser has already taken the vital first step towards sorting out their affairs. Feel free to contact me on **01288 35 9000** for help.

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