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Failure of Gifts in a Will

By Amy Haste



A Will is an extremely important document to have in place as it sets out how you would like your assets dealt with after your death. Should you wish to make any gifts in your Will, it is important to realise that a gift may fail in certain circumstances.

Firstly, no-one can be forced to accept a gift under a Will. If somebody chooses not to accept a gift, then the gift will fail.

If someone is to receive a gift under a Will but they pass away before the Will maker, then the gift will also fail. If this happens, then the gift the deceased would have received, will be divided with the rest of the estate.

Another way that a gift can fail under a Will is if the Will maker no longer owns the asset at the date of their death. For example, if the Will maker gave her granddaughter her engagement ring as a gift in her Will, but the ring was sold before the Will maker's death, the gift would fail and the granddaughter would not receive the ring.

It is also important to make sure gifts are sufficiently described in the Will. For example, if the Will maker owned two engagement rings and she gave her granddaughter her "engagement ring" in her Will, the gift would fail because it is unclear which ring the Will maker was intending to give the granddaughter. In this situation it is important to explain exactly which ring the Will maker was referring to, i.e. the gold engagement ring with three diamonds.

Another situation where a gift can fail is if there are not enough assets in the estate. Assets are firstly used to pay any debts and administration expenses before any distributions are made. Specific gifts detailed in the Will are then paid out before the estate residue is distributed.

For example, Betty had a Will in place setting out that she wished to give

\$10,000 to each of her grandchildren—George and Gillian. She then wished for the rest of her estate to be divided equally between her two children, Mary and Mark. Unfortunately when Betty passed away, she only had \$18,000 in her estate. After her debts and administration expenses were paid, there was only \$14,000 left for distribution. As there was not enough money in her estate to give the gifts to her grandchildren, the gifts failed and Mark and Mary received \$7,000 each.

One way Betty could have ensured that her grandchildren received a portion of her estate, is to divide the rest of her estate into 10 equal parts, giving four parts to Mark, four parts to Mary and one part to each of her grandchildren.

These are just some of the ways that gifts can fail in a Will. Should you have any queries in relation to gifts in Wills or if there are any changes you would like to make to your Will, please do not hesitate to contact the Collins and May law team.

Our next newsletter will cover the topic of Enduring Powers of Attorney