

# The hidden cost of homemade Wills



Daryl left an estate worth millions to his children.

1. The Will contained testamentary trusts BUT failed to nominate beneficiaries of the trust.
2. The Will also provided cash gifts "up to a maximum of \$".
3. The Will did not contain an appropriate clause to deal with capital gains tax.
4. Numerous other inconsistencies existed.

The Court was asked to rectify the Will.

## *Outcome*

Evidence was provided that the deceased did not wish any of his children to be worse off as a consequence of capital gains tax. After seeking expert advice the Court rectified the Will to ensure that the trusts incurred an equal portion of capital gains tax. The Court also rectified the Will to insert the beneficiaries of the trust, remove any inconsistencies and inserted a definitive amount to the value of the gift.

## *Lesson*

### **Accept advice of professionals**

Although originally drafted by lawyers, the Will had been re-drafted by the daughter upon instructions of the deceased. As a result the estate incurred significant costs and time delays in order to rectify and execute the terms of the Will. All of this would have been avoided had the final version been drafted by a solicitor.

**Smallwoods Lawyers  
has advised families and  
businesses for over 40 years**

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legal advice, please give  
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