

BEWARE OF GIVING SPECIFIC GIFTS



If you make a gift of an asset in a Will and that asset does not exist at the time of death, the gift fails.

When Tom prepared his last Will he owned a home on land. At the time of Tom's death, he owned a relocatable home but he did not own any real estate. In his Will Tom gave "the real estate owned by me" to a friend.

Outcome

The gift failed because at the time of his death Tom only owned a relocatable home and had a bond for aged care accommodation repayable to his estate for aged care accommodation.

Fortunately for the friend (the beneficiary), the Court decided that the Will failed to give effect to Tom's instructions (to give his "house" to the friend). Therefore the Court rectified the Will to substitute "my house" for "the real estate owned by me".

The gift of Tom's relocatable home then went to the beneficiary. The friend however, missed out on the bond even though it had been paid from the sale of the "real estate".

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