Deceased's Will failed to give effect to intentions of the deceased

The deceased left a Will. He gave an interest in his residence to his de facto spouse being the right to reside there for 2 years after his death, then the property was to be sold and his share in the property be given to his son. The rest of the estate was also to be given to his son. The Will contained a direction that the deceased's superannuation benefit be paid to his son.

The deceased had superannuation but failed to nominate a beneficiary to receive his superannuation on his death.

The trustee of the superfund in its discretion paid the superannuation benefit to the de facto spouse.

The Tribunal found that the direction in the Will was invalid for a number of reasons, but mainly because a valid notice had not been given to the trustee of the superannuation fund to meet the requirements of the Regulations.

Accordingly, all the superannuation benefits of the deceased member were paid to the de facto spouse which was clearly contrary to the intention of the deceased by his Will.

Lesson

The Superannuation Regulation specifies clear procedures to be adopted when dealing with superannuation benefits and must be followed. At the time of planning your estate or considering these issues, consult a lawyer experienced with superannuation matters and estate planning issues to ensure your wishes are clearly expressed and are legally binding.

If you need good professional advice please contact Richard Smallwood.

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