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LAWYERS

THE VALIDATION OF UNSIGNED WILLS

Until 2007 it was essential that a Will maker signed his/her Will. If a Will maker gave instructions to their lawyer to draft a Will and then did nothing about having its signed in accordance with the legislation in existence at the time, the Will was of no effect and in the case of someone not having made a Will previously, they would die intestate and their estate would have to be distributed in accordance with the provisions in the Administration Act. Otherwise the last Will made by the deceased would prevail and in some cases that would not be the result that the deceased person wanted.

In 2007 the Government of the day introduced a new Wills Act which provided that a Will maker has to sign the Will in the presence of two witnesses and have the witnesses sign in their capacity as witnesses just as before. It also recognized that many of us always intend to do what we should but sometimes there is a reluctance to sign, or forgetfulness or just putting off the final signing, so the new legislation stated where a Will or other document has been prepared which effectively expresses a deceased person's testamentary intentions the High Court is empowered to validate that Will as the deceased's last Will.

However, the Court has to be satisfied on the evidence that the document clearly states the deceased's testamentary intentions. If that is not possible or if there is uncertainty that the document sets out the final wishes of the deceased, the Court will not validate the document as being their last Will. Much depends on the evidence presented to the Court.

The Courts in the New Zealand appear to take a very broad interpretation of the legislation. There is a similar power in Australia but the wording of the statute is different from ours and gives different results.

It is now incumbent on anyone who is appointed as an executor under a Will to ensure that a deceased person did not leave an unsigned Will made subsequent to a signed Will. Anyone who is affected by an unsigned Will may bring an action for validation and the Court will direct that all persons who have an interest in an earlier signed Will are served with copies of the application and evidence and they have the option of opposing the validation of the later unsigned Will.

It is an interesting innovation and it remains to be seen whether it will remain in its present form. It appears to work well but as in everything there will be some people who will be dissatisfied with the results.

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