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PROVISION FOR CHILDREN UNDER A WILL

I have been consulted by a client concerning provision made for her children under the will of her grandfather.

It would be regarded as a standard husband/wife will. Appointing his solicitor and accountant as executors and giving all to his wife if she was to survive him.

His wife did not survive and so the alternate provisions applied with the estate to be divided between his step daughter, step granddaughters and step great grand children.

The will was made in April 2008.

Previously in February 2008 my client, a named step granddaughter with then two step great grandchildren had entered into consent orders in the Federal Magistrates Court by which the great grandchildren were placed under the care of their father with their mother (who was not my client at the time) having limited contact.

I have now been instructed to obtain an order for equal care of the children. My client has maintained an excellent relationship with the children but the relationship with the father is increasingly strained as he has remarried a woman with three children of prior relationships.

The grandfather died and probate will shortly be granted by the court. The will allows payment of the whole or any part of the great grand children's share:

"..to the guardian or other person having for the time being the custody or care of such minor beneficiary without being responsible to see to the application thereof."

The effect of this provision under the will is that a non blood relative, who has entered into a new relationship which includes children not related to him or the deceased could end up with the total share of the estate and not have to account for how the entitlement currently estimated at \$200,000.00 per child has been spent.

Care must be taken when drafting a will to ensure that the gift will benefit those whom you have intended. Keep yourself up to date with changes in relationships within the family and ensure your will reflects those changes so the parties you want to benefit receive what you have worked so hard to earn.

Give consideration to a testamentary trust. This allows you to name different classes of beneficiaries and your executors, the trustees of the trust can take into account current circumstances to ensure that only your intended benefit for your generosity.

Martin Collins