



Private Client Law Bulletin

READ THE SMALL PRINT – AND KNOW WHAT IT MEANS!

The Special Commissioners have recently issued a decision in a case involving the personal representatives of P Waldon deceased.

Wills have often been seen as “loss leaders” by solicitors’ practices. However, this case highlights the complexity involved in correctly drafting a Will and the tax consequences of getting it wrong.

Mr Waldon had his Will drafted by an insurance company will writing service. The company could not find the will drafting file after his death. Mr Waldon’s house “the property” was left on a trust for sale (subject to his wife’s consent) and the Trustees were given the discretion to allow his wife to occupy the property. The residue was held on a discretionary trust.

On Mr Waldon’s death the insurance company acted as Executor and claimed spouse exemption on the property trust. Mrs Waldon died 2 ½ years later – during which time the property had significantly increased in value – but her executors did not aggregate the property trust on the basis that Mrs Waldon did not have an interest in possession.

The Commissioners held that there was no life interest. The words used in the Will in the absence of any record of Mr Waldon’s instructions, were interpreted as creating a Discretionary Settlement.

The Revenue are not appealing the decision, most probably on the basis that the precise form of wording used in the Will will be very unlikely to reoccur. It does however highlight the need to have Wills correctly drafted so that families can properly understand and anticipate the tax consequences of their actions.

If you would like an informal chat or require any specific advice in connection with the material contained in this bulletin, or on any other Private Client issues, please contact the Liverpool office on 0151 600 3451 or the Manchester office on 0161 836 8800.

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