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LawTalk Blog



What happens when the beneficiary in my Will is a child under the age of 18?

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When a person dies they usually leave behind a Will that specifies what is to happen to their assets upon their death. A Will also describes who are to be executors; that is, those whose role it will be to manage the estate's assets and ensure the terms of the Will are carried out lawfully.

It is quite common that people leave a gift (or perhaps the majority of their estate) to a child and that child may well be under the age of 18 years.

One example might be where both parents, upon each other's death, give their entire estate to their child or children, some or all of whom may be minors.

In those circumstances the named executors to a Will also then act as trustees of a fund set up on behalf of the children. That is, they become administrators and controllers of the assets left to the child or children.

Most legally drawn Wills allow for some payments out of the fund for the benefit of any child. School fees, other educational expenses and/or health related expenses could be paid for out of a fund set aside for that child. It is only when the child reaches 18, or an age specified in the Will by the Will maker, that the control of any trustees end and the child beneficiaries can control the fund themselves – Ferrari anyone?

The Will maker may wish to specify certain conditions on the use, or administration of the fund. Or, they may wish to increase the age the child assumes control – some prefer the age of 21 or even 25 years.

But what happens if the child dies before reaching that critical age of 18?

If the child beneficiary dies before the age of 18 (or the age nominated by the Will maker), any gift or bequest to them is treated as if the child had predeceased the testator (the person making the Will).

In which case the executors must then look to whether any other provisions exist in the Will. A properly prepared Will can account for unexpected deaths and provide substitute provisions.

For example, if your gift is to a child who can only control the fund after they turn 18 but they die before reaching that age then you may nominate someone else to take that benefit (or what remains of it at the time).

If there is no substitute provision then it is possible the gift will be distributed on the "[rules of intestacy](#)".

"If you do not want your estate to be divided and distributed unexpectedly and not in accordance with your wishes, it is critical you have your Will drafted by a lawyer experienced in Wills and Estate Planning."

These rules are a set of cascading directions to administrators or executors as to how the gift should be divided. They are more often used [when there is no Will](#).

It may end up being spouses, other children, parents or even siblings that take the benefit. Importantly, it may be someone that you did not intend to benefit from your estate – which is exactly what we want to avoid when we make a Will in the first place, right?

If you do not want your estate to be divided and distributed unexpectedly and not in accordance with your wishes, it is critical you have your Will drafted by a lawyer experienced in Wills and Estate Planning.

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