

# Focus on phoney wills

Is it time for more regulation to prevent unqualified will writers presenting problems for unwitting clients, asks **Tim Walker**?

**W**hich one of the following statements is true? Making a will has never been easier.

Making a will has never been harder.

In truth, you could find evidence to support both. On the one hand, will writers (let's forget just for a moment about solicitors) are everywhere – in newspapers, on the net, on the Tube, on the high street. On the other hand will writing is possibly the most unregulated of legal processes with almost anyone allowed to set up in business as Uncle Tom Cobley Will Writers Ltd, with all the chaos that leads to.

Meanwhile, the public is largely unaware of the dangers. A recent survey found that two out of three people think that all will writers are solicitors.

So where does this leave solicitors and how can the inexperienced, the uninsured and the unregulated will writers be stopped in their tracks?

## Accountable

Susan Bateson, head of the private client department at Lee & Priestley LLP in Leeds, says: "Solicitors face so much regulation in everything we do. We are also accountable for our actions and have to be insured to the hilt to be able to practise. It seems unfair therefore that anybody can set themselves up and start writing wills – documents that can have massive implications for surviving loved ones."

In October, the Law Society warned that unregulated will writers were causing major problems for probate



solicitors who are being handed invalid or badly drafted wills. In some cases wills have even gone missing because will writing companies have been wound up, it reported.

A recent Law Society-commissioned review of regulation, carried out by Lord Hunt of Wirral, said that a 'fringe legal market' in will writing, probate and claims handling was a risk to the public.

Susan adds: "We have to get the message across to people that solicitors have the training and expertise to write sound wills. We have the experience and we keep up to date with rule changes on inheritance tax and other matters."

## Intestacy

She also says that the other battle of convincing people to make a will in the first place has still not been won: "Recent changes to rules on intestacy may well confuse the issue: the amount married couples and those in civil partnerships with children can receive upon their partner's death has doubled from £125,000 to £250,000. The rule change is sensible because it means that the limit now covers the average value of a house, but I just hope this is not seen as a signal that it is acceptable not to make a will."

Having said that people should make wills, what is the profession to do about unqualified will writers, apart from push

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for more regulation? Is there a problem with the cost of making a will – are people just moving in search of a better deal?

Susan thinks there is confusion here and an inaccurate perception that making a will is more expensive if you use a solicitor. She explains: "Because some will writers offer a headline cost which seems appealing, it leads people to believe that they will get a good deal. However, this is sometimes just a basic price and what often happens is that there are all sorts of add-ons to pay for. What we as solicitors can offer is a fixed price, so we need to educate the public that you can have a professional will at a reasonable cost from your solicitor."

Rita Leat, president of The Fellowship of Professional Willwriters and Probate Practitioners, is also pressing hard for more regulation in will writing. The Fellowship conducted the survey which found that two out of three people thought all will writers were solicitors. She says: "It is quite alarming that the majority of the people we asked thought all will writers were solicitors, especially as there are many will writers out there who hold no training nor any type of qualification. People need to check the background of the person who is dealing with their will to avoid difficulties for their family and loved ones later."

"Here at The Fellowship, we cannot stress enough how important it is for consumers to be aware of exactly who is dealing with their will. There are a lot of excellent will writers who offer an excellent service; however, we promote the highest standards of practice by ensuring that all our members have nationally accredited qualifications – namely the BTEC qualifications offered by Edexcel. Consumers should also ask whether the will writer is a member of a professional body that insists on CRB checks and offers a compensation fund should things go wrong."

Other survey findings included:

- When asked to respond to the true or false statement that 'Anyone can currently set themselves up as a willwriter, as qualifications are not needed', 82 per cent of people thought that was incorrect.
- 45 per cent of people asked said they felt confused by the will writing process and 21 per cent took the attitude that they would rather write their will themselves, despite the complications that could crop up.

With this type of ignorance around and with a demand for fast, off-the-shelf solutions, are solicitors fighting a losing battle to retain will writing? Is the profession keeping pace with developments? How long before a will writing App is created for your iPhone for example? Some may scoff at this, but there is already an App for conveyancing.

### Safe

Susan Bateson believes solicitors need to stress that where both will writing and probate are concerned, solicitors are the safest pair of hands: "I have even heard that some funeral directors are offering probate services. Obviously that probate work will be eventually be under the control of a solicitor, but people need to realise that they may end up paying up to nine per cent of the value of the estate if they take this route. Compare that to around two per cent if you go to a solicitor. And where probate is concerned, people need to know that the experience that solicitors have means that they can stand your corner when it comes to a dispute – for example, with the Revenue."

She continues: "The Legal Services Act will provide a fresh challenge, so we need to remind people that they can trust established firms of solicitors when it comes to arranging the most tax-efficient gifting of wealth from one generation to another. Probate is much more complex

than many in the outside world assume and this must never be an area which becomes unregulated."

It seems there is an irresistible force for regulation in will writing and any moves to deregulate probate further will be stongly resisted, but the battle must surely be one of educating the public that what happens to their estate when they die should not be left in the hands of the uninitiated. ■

### Just for fun: weird wills

- Heinrich Heine was a German poet who died in 1856. He left his estate to his wife, with one condition... she must remarry. His reasoning? "Because then there will be at least one man to regret my death."
- Henry Budd died in 1862. His will created a £200,000 trust fund for his two sons. The only catch was that neither of them could ever grow a moustache.
- From the will of an anonymous Irishman come these wise words: "To my wife, I leave her lover and the knowledge that I was not the fool she thought me; to my son, I leave the pleasure of earning a living. For 20 years he thought the pleasure was mine; he was mistaken."
- The Thellusson Will Case was fictionalised by Charles Dickens as Jarndyce and Jarndyce in *Bleak House*, and led to Parliament legislating against such accumulation of money for later distribution.
- The longest known legal will is that of Englishwoman Fredericka Stilwell-Cook. Probated in 1925, it was 1,066 pages, and had to be bound in 4 volumes.

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