

# Wills and Probate

## Secrets and ideas to help you save money

### Introduction

The majority of solicitors and legal services professionals working for the banks are honest and hardworking. More often than not they try to give value for money.

However, they have ways of maximising their profits that they would probably prefer the public at large not to know, or at least not to scrutinise too carefully. Forewarned is forearmed.

If by the time you read this you have already made your Will or Power of Attorney, it may not be too late to use some of the information it contains to improve matters if you wish to do so.

### Lawyers or Salesmen?

Increasingly, solicitors and law firms are facing pressures as a result of deregulation and competition. Most lawyers now have fee-earning targets to meet to justify their salaries, just like salesmen. They are required to bill at high rates and often and to think up innovative ways to increase your bill as well as to try to sell you more legal services.

Why should this be an issue? – Read on to find out.

### Conflicts of Interest

Some lawyers go to great lengths to avoid conflicts of interest in many areas of their work.

Somewhat surprisingly, they do not seem to take the same level of care to avoid conflicts of interest in the area of Wills and Probate.

There is a conflict of interest on most occasions that lawyers recommend their own law firms or banks recommend themselves to act as executors in a Will. The conflict lies between giving you the best advice about who to appoint as executor, and giving the advice which is best for the law firm.

When a lawyer recommends that he or his firm should be appointed as executor(s), the advice almost cannot help but be biased, as the lawyer will usually be recommending his firm to act for commercial reasons – to ensure that the Probate work is done by him or by his firm.

The question of whether his firm or a bank is better placed to act than the client's family or indeed other law firms is unlikely to be considered.

Logically, the best result for the client's family in most cases would probably be obtained by giving them the option when the time arose as to where to turn to for legal advice. This result could be obtained by advising the Testator to appoint family members to act as Executors and/or Trustees, or in the case of a Power of Attorney, the appointment of an Attorney and not appointing the law firm or bank drawing up the document.

The family members could then approach their legal adviser of choice to assist with any probate and/or administration and/or Trust work.

Once a lawyer or bank is called upon to act, a further conflict of interest becomes clear as the lawyer who is doing the work and charging for it is also the same person who has to approve the bill.

The lawyer or bank in their capacity as professional Executor/Trustee/Attorney has to raise a bill for approval by the consumer, who is.....him or herself in their professional capacity!

### **The incentive for lawyers or banks to act as executors**

There are many advantages to a lawyer in being named as Executor in a Will.

If a lawyer or bank is named as the Executor in a Will of a person who has died, they have the right to administer the estate of that person. This means that they will have a legal job for which they will receive payment and most often an extremely large payment!

They may also be able to charge more money for the work than for the other work they do. Probate work has a reputation amongst lawyers and banks for being a particularly profitable line of work.

Lawyers can charge high fees for Probate work (higher than they charge for much of their other work) and there are often ancillary tasks which will come their way as a result of the original Probate task. The lawyer will usually give themselves or their firm any conveyancing [legal work of selling property] that often comes with the probate work and they will also more than likely carry out the income tax and accounts work themselves.

If they are not named as Executor, as in 100% of Wills prepared by The Will Partnership, they will have to wait and see whether the Executors named in the Will ask for assistance and may find themselves involved in arduous negotiations to secure the work.

### **Does the lawyers or banks incentive to act affect their advice?**

Since there an overwhelming incentive to lawyers and banks to act as executors, those lawyers and banks involved in probate work normally have measures in place to ensure that they are given to opportunity to act as executors as often as possible and the way that they do this is by having themselves named as Executors in Wills that they prepare for you, the public.

They will brief their staff to arrange this whenever they can.

If you visit a lawyer or bank to ask for advice about probate, administration of Trusts or Power of Attorney Administration you will probably be given advice about what is involved, then told to leave all the relevant documents with them and to let them get on with it.

You may never be told what other options could be available.

This is because the more work that your lawyer does, the more they will be paid with their high hourly rates and critically, if they do the entire Probate task (i.e., gets the grant of Probate and administers the estate), they may be able to charge a percentage fee in addition to his hourly rate.

Some banks are known to START at 5% of the estate value [then they just sub contract to lawyers at a lower rate and take the profit off the top] whilst solicitors charge anywhere usually between 3 and 7% of the value of the estate for work your chosen Executors could do all by themselves with a little very low cost hand holding saving your estate a fortune which means more money for your heirs.

The basis of charging for Probate varies from law firm to law firm. Some charge on the basis of a (usually high) hourly rate; some charge on the basis of a percentage of the value of the Estate;

some get the best of both worlds and charge on the basis of an hourly rate plus a percentage of the value of the estate.

## **Charging Clauses**

Almost all wills drafted by a lawyer or bank contain charging clauses. A charging clause is a clause which entitles a professional executor to charge for services in administering an estate. A typical charging clause will be something like this:

“Any of my Executors or Trustees who is a professional engaged in any profession or business shall be entitled to charge and be paid all professional and other reasonable charges for any business done or services rendered or time spent by him or his firm in connection with the administration of my estate or the trusts powers and provisions of this Will whether or not within the scope of his usual business or profession; and whether or not the work requires the employment of a person who is professionally qualified or skilled”  
Such a clause is desirable if professional executors are appointed to administer your estate.

NO Will Partnership drafted Will contains any such clause!

Much of the work in the administration of an estate does not require professional skill and expertise – all it requires is a person of average intelligence and education to make a modest effort and do it. This probably applies to at least 50% of the work involved in administering an estate.

So a high price is paid as often as not for work which does not require the attention of a legal professional. In many cases you could administer an estate yourself and employ a lawyer just to give you advice and support with the legal issues.

## **So why do lawyers and banks usually store Wills free of charge?**

Lawyers and banks will generally offer to store Wills free of charge. This is not entirely altruistic. Storing Wills gives lawyers and banks the opportunity, if they are named or not named as executors, to get to meet the Executors named in the Wills at an early stage and to offer to do the probate work for the executors and often this offer is accepted.

It is widely acknowledged that the key to a profitable probate department is a large Will bank, i.e., a large number of wills retained in storage by the firm of lawyers.

Please note that the fact that a lawyer or bank has offered to store your Will does not guarantee that your will is going to be stored in ideal conditions, or even particularly safe conditions. Storage facilities maintained by lawyers and banks vary widely, and before accepting the offer of free storage from a lawyer or bank, you would be wise to ask what the storage conditions entail. Is your Will going to be held in a fireproof cabinet? Will the container be waterproof? Will the lawyer or bank be insured against loss? What are the skills of the people maintaining the storage records?

Paying for storage might in many cases be a better and safer option, like they say “there’s no such thing as a free lunch!”

We hope reading this has been beneficial and worthwhile and if you want to see how different The Will Partnership treats its clients please get in touch.