

WILLS – ENSURING THEIR EFFECTIVENESS

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INTRODUCTION

If it is accepted that the preferred option for the administration of an estate is in accordance with the testator's expressed wishes rather than by the application of statutory trusts under the Administration Act 1969 [section 77] then it follows that the preparation of an effective Will is an important exercise.

We are all familiar with the adages that "where there is a Will there is a family member" and that "death and money bring out the worst in people". No doubt many of us could attest to the fact that society is becoming more litigious, that people are becoming more aggressive in enforcing what they perceive are their rights as well as an expanded expectation of what constitutes their rights when it comes to inheritances. Indeed, anecdotal evidence abounds that the retirement planning of the younger generation is how to deal with their inheritance.

The paradigm shift we are seeing in intergenerational inheritance expectations could be seen as placing a significantly greater importance on the effect of the Will, not just to ensure that the testator's intentions are given effect to (in the strict sense of the transfer of property to the beneficiaries) but also to minimise the risks of the Will being 'rewritten' as a result of potential challenges to the Will.

In simple terms, it is suggested that the effectiveness of a Will would generally be dependant upon two main things: the content – or lack thereof – of the Will itself and also the facts and circumstances of and relating to the execution of the Will.

The first part of the paper will consider some of the issues to be taken into account when drafting the Will while the second part of the paper by Sonja Clapham addresses various facets of the Wills practice that can compromise the validity of the Will.

BACKGROUND

There are perhaps 2 main underlying precepts to recognise with a view to ensuring the effectiveness of a Will:

1. The nature of the Will; and
2. The objective of the Will.

In simple terms, a "*Will*" in the physical sense may be defined as a document executed in prescribed form evidencing the intentions of the Testator to take effect on his or her death.¹

It follows then that if the Will is the means of achieving the Testator's intentions, it is critical to identify the overall objective the Testator is trying to achieve by the Will. More particularly, the will drafter needs to ascertain from the client whether the client merely wishes to transfer their residual estate to the beneficiaries or whether they wish to arrange for the protection and preservation of their residual estate for the benefit of the beneficiaries.

OBJECTIVES OF THE WILL

The subtlety of the distinction between those two concepts cannot be underestimated. Traditionally, the transfer of wealth from one generation to the next via a Will was in most cases a satisfactory

¹ Neville's Law of Trusts, Wills & Administration 9th Edition, p287 at para 14.1

mechanism for achieving the objective of inter-generational wealth transfer. The problem in this day and age is that the end result of the inter-generational asset transfer may compromise the testator's underlying objective.

Take for example the not unusual scenario of a family comprising say 2 parents and 3 children. Traditionally, the parents would leave their estate to the surviving spouse and thereafter, to the 3 children equally. The children would then each inherit a 1/3rd share of their parents' estate, pay down the mortgage they have with their spouse and continue on with life.

That scenario is now changing. With the change of social mores, promulgated in no small part by the advent of the Property (Relationships) Act 1976, generations being brought up in an environment of commercialism and a society where expenditure exceeding income is an acceptable norm, there is a questioning of the wisdom of the outright vesting of an inheritance in children under a Will. Parents are becoming increasingly concerned that the inheritance that would traditionally be left to their children under the Will may now be vulnerable to relationship claims, creditor recourse or perhaps even just frivolous spending by a child who might best be described as a spendthrift beneficiary.

As a result, we are seeing a mindshift in estate planning considerations to the effect that what clients generally intend these days is to protect and preserve their estate for the benefit of their children – rather than just vesting it in their children outright under the Will. If that precept stands true, then the Will becomes a conduit for achieving the objective rather than the paramount estate planning tool as used to be the case.

Having said all of that, it needs to be recognised that the focus of this paper is to address some of the drafting issues in respect of the Will rather than estate planning as a whole.

WILL DRAFTING ISSUES AND CONSIDERATIONS

Once the Will maker has identified with their client the objective that the Will is intended to achieve, there are a number of issues and/or facts that need to be addressed with a view to creating a valid and effective Will.

Taking Instructions

The starting point in the preparation of any Will is the need for clear instructions of the Testator's intentions. To do that, the Will drafter needs to establish a comprehensive profile of the Testator, including personal details, relationship status, assets and liabilities and family relationships.

Although it seems obvious, the full and correct spelling of the Testator's name is important, whether that name differs from the birth certificate, marriage certificate or by common usage.

Details of the Testator's current address, relationship status and family obligations are also critical, not only to prepare a Will that accurately achieves the Settlor's intentions but also to avoid the possibility of claims against the estate under the Family Protection Act, Testamentary Promises Act, Property Relationships Act.

Addressing these issues with the Testator – in particular with an elderly client – will assist in determining the overall capacity of the Testator. This is an aspect that Sonja addresses more fully in her part of the paper.

Property (Relationships) Act 1976

The impact of this Act has seemingly permeated every aspect of legal practice these days and Will drafting has not been spared its application.

On one hand, there seems to be an increasing incidence of clients in current relationships who now either have – or should have - an agreement contracting out, in some form or another, of the Property (Relationships) Act 1976. Whether it is a full and final agreement dealing with all assets or merely a partial agreement addressing certain specific assets, the principle is the same – the Agreement should be recognised in the Will.

This paper is not intended as a dissertation – whether in whole or in part – on the effect and implications of the Property (Relationships) Act 1976 from death and the administration of estates; there are excellent papers from recent and indeed forthcoming conferences on that topic.

What is intended though is to flag the benefit of addressing the issue so as to assist in achieving an effective Will.

The rationale for referencing the Agreement in the Will is to confer a greater measure of certainty to the administration of the estate not only by identifying clearly the testator's assets the subject of the Will but also, by process of elimination, perhaps identifying for the executors that property of the testator that may potentially be vulnerable to possible claims under the Act.

Against that background, the recommendation is to include specific reference to the agreement in the Will to ensure that the effect of the agreement is not lost or compromised in the administration of the estate. Note though that referring to the Agreement in the Will is not intended as an incorporation of the agreement into the Will *per se* as to do so would require the Agreement to be admitted to probate with the Will.

While the foregoing gives a suggestion for how to proceed if an Agreement contracting out of the Act exists, what if, on the other hand, the client is in a relationship to which the Act would apply and they do not have an agreement contracting out of the Act? Consideration will need to be given as how best to address that issue, the potential vulnerability of the testator's assets to such a claim and importantly, the effect that a claim under the Act would have on the intentions of the Will.

Revenue Versus Capital Assets

Once the testator's assets (and liabilities) have been identified, the next step is to distinguish between revenue assets and capital assets. This distinction has become critical in the context of treatment under the will due to the advent of the recent amendments to tax legislation.

The general effect of those changes in relation to Wills is that the two transfers involved with the estate (i.e. the transfer of assets from the deceased to the executors and then the transfer of assets from the executors to the beneficiaries) are deemed transfers at market value. The significance of deemed market transfers is the potential tax liabilities that could be triggered for example in respect of depreciation recovered on investment properties.

What all of this means is that if the testator owns certain income producing assets, care needs to be taken as to how those assets are dealt with under the Will to ensure that unintended tax obligations are not triggered by the testator's death.

Having said that, in certain circumstances there will be relief from those tax implications (called "roll over relief") whereby the roll over relief avoids the realisation of assets at deemed market value and therefore allows transfers avoiding taxable income arising on death.

Roll over relief will be available in certain circumstances including property left to a spouse or partner (which will apparently be extended to civil union partners from 1 April 2007) as well as property left to close relatives and charities.

Clearly, though, the roll over relief only has limited application and highlights the existence of what has been called the "Asset Planning Conundrum" i.e. because maximum tax efficiency and maximum asset protection will seldom be available from the outset when structuring or restructuring one's affairs,

clients need to identify which objective is paramount from the outset – asset protection or tax efficiency.

Accordingly, while roll over relief may be seen as an appropriate mechanism to minimise if not avoid tax implications, it needs to be determined in the bigger picture whether having the surviving partner or spouse inheriting the entirety of the revenue asset is in their long term best interests.

For example to what extent might the assets held by the surviving partner/spouse be vulnerable to potential claims from future spouses under the Property Relationships Act. Would placing all the revenue assets – and hence the income therefrom – in the surviving spouse/partner's names expose the surviving partner/spouse to greater tax obligations to the IRD? If the survivor inherits all of the assets, would that compromise their potential eligibility for subsidy assistance if long term hospital care were required at same time in the future?

These issues highlight the importance of clearly identifying of the testator's assets, identifying the nature of the testator's personal relationships and assessing the testator's objectives for the long term passage of their wealth.

Foreign Assets

Another issue to consider in respect of the testator's assets is whether there are any foreign assets. There will be a distinction between movable assets and immovable assets in that the manner in which immovable assets are dealt with will be determined by the laws of the jurisdiction in which they are situated.

It may therefore be appropriate for foreign movable assets e.g. personal property to be dealt with by a New Zealand Will but for foreign immovable property – such as land - to be dealt with by a Will in the jurisdiction in which the foreign immovable property is situated.

If that is appropriate, it will be critical to ensure that the New Zealand Will is expressed as being limited to those assets which are subject to the jurisdiction of the Courts of New Zealand and includes all rights and interests which may be recovered or enforced in the Courts of New Zealand.

Care will also need to be taken to ensure that the New Zealand Will does not inadvertently revoke the foreign Will.

Legacies, Bequests & Devises

Clients' instructions as to the nature and extent of legacies, bequests or devises should be clearly recorded. In determining what legacies, bequest or devises a testator wishes to leave, it is helpful to know the difference between the 3!

A **bequest** is a gift of personalty of any kind. It can include a legacy as well as a residuary gift.

A **devise** is a gift of realty.

A **legacy** is a gift of personalty of which there are 2 main types – general and specific.

A general legacy is a gift which the personal representative is bound to provide either from the testator's property or if there is insufficient, then by purchasing the item bequeathed from the testator's personal estate. For example if the general legacy is money and there are not enough funds to satisfy the legacy but there are assets available, then the executor needs to realise sufficient of the assets to pay the legacy.

A specific legacy on the other hand is a gift of a specific part of a client's estate. If the item in question is sold or disposed of by the deceased before their death, the legacy fails by ademption.

In addition to any specified legacies, provision should also be made for the disposal of any residual personalty and personal effects. Whether the Testator wishes to distribute items specifically to named beneficiaries, to named beneficiaries equally, to a class of beneficiaries or indeed to the trustees to be distributed between beneficiaries or class of beneficiaries as the Trustees think fit is something that should be clarified.

Although not currently an issue, given the repeal of the estate and death duties, specifying whether the gift is free of duties can sometimes be important.

Trustees and Executors

Appointment of the trustees and executors needs to identify clearly the parties nominated to carry out the administration of the estate.

While generally, the Testator is able to appoint whomever they wish as an executor, there are certain restrictions (i.e. bankrupts or insolvent persons, minors, persons of unsound mind, partnerships)

Of particular interest to lawyers is the appointment of a law firm as an executor. Where a firm is appointed, the Testator is taken to have intended the persons forming the partnership *at the date of the Will* to be the executors unless a contrary intention appears from the Will).²

Note though that if appointing a Trustee Company, only those statutory trustee companies can be appointed. Companies acting as corporate trustees can not be executors of an estate

In certain circumstances, a Testator may wish to appoint their surviving spouse as the sole executor and beneficiary of their residual estate, following payment of debts and expenses of the deceased or in respect of the estate.

If a surviving spouse is appointed as sole executor and beneficiary, it is also prudent to include alternate provisions in the event the nominated executor and beneficiary does not survive to take the interest under the Will.

Debt Forgiveness

In certain circumstances, marital loans may have been recorded between spouses so as to rationalise asset ownership but with a view to minimising the risk of vulnerability to potential gift duty. In such circumstances, the Testator may wish for that residual indebtedness to be extinguished upon death.

Similarly, if a Testator was involved in a gifting programme for a Trust (or Trusts) it is generally desirable for any such residual debt also to be extinguished under the Will. In certain circumstances, the residual debt can be used as a mechanism for providing legacies to parties who are not beneficiaries of the Trust. In such circumstances, the debt would only be extinguished to the extent required after the Trust has repaid to the estate the amount required for the legacy.

Guardians

The nomination of people to act as guardians for minor children is, in many cases, a difficult decision for many people. The problem on many seems occasions to stem from the fact that there is not a clear understanding of what actually constitutes "Guardianship."

Section 15 of the Care of Children Act 2004 (which repealed the Guardianship Act 1968) defines "guardianship" of a child as meaning having, in relation to the child,

² In *Bonis Fernie* (1849) 6 No. of Cas 657 The Public Trustee companies. Note though that the trustee company must be those companies empowered by Act of Parliament as opposed merely to a company acting as a trustee.

- (a) all duties, powers, rights, and responsibilities that a parent of the child has in relation to the upbringing of the child:
- (b) every duty, power, right, and responsibility that is vested in the guardian of a child by any enactment:
- (c) every duty, power, right, and responsibility that, immediately before the commencement, on 1 January 1970, of the Guardianship Act 1968, was vested in a sole guardian of a child by an enactment or rule of law.

Section 17 of the Act provides *inter alia* that the father and the mother of a child are guardians jointly of the child.

So we know who the 'initial' guardians are and what they can do but what happens when they pass away?

Section 26 (1) of that Act provides that the parent of a child may by deed or will (executed before or after the child's birth) appoint a person to be a testamentary guardian of the child after the parent's death.

The Act goes on to provide in section 26 (2) that if, at the time of his or her death, the parent appointing a guardian under subsection (1) is a guardian of the child, the testamentary guardian is from that time, if he or she is 20 years of age or older, either sole guardian **or a guardian in addition to any other guardian**, as the case may be [emphasis added].

Importantly, section 26 (5) provides to the effect that no testamentary guardian of a child has, just because of an appointment under this section, the role of providing day-to-day care for the child.

This is an important distinction as is re-enforced by section 16 (3) of the Act whereby a guardian of a child may exercise (or continue to exercise) the duties, powers, rights, and responsibilities of a guardian in relation to the child, **whether or not the child lives with the guardian**, unless a Court order provides otherwise.

Again, the emphasis has been added, in this case to highlight the fact that a child might not necessarily live with the guardian

Life Interests

In certain circumstances, the granting of a life interest to generally, a surviving partner or spouse can be advantageous. The consideration of whether life interest is appropriate would depend on a number of factors and assumptions. Initially, it assumes that the asset in question is not owned as joint tenants by the Testator and their partner/spouse but rather, is owned in its entirety by the Testator. If the property is owned as joint tenants, then the deceased's surviving partner or spouse would "inherit" the entire property by operation of the law of survivorship.

Whether a life interest is an appropriate estate planning mechanism may depend upon whether the assets in question are revenue or capital assets. If the life interest is to be granted in respect of revenue assets, then the roll over relief (referred to above) would not be available. If the life interest is in respect of a capital asset it will need to be ensured that the Testator or the joint ownership of the asset is properly recorded (i.e. as a tenant in common or outright).

If the life interest is in respect of a capital asset such as the family home, then consideration would need to be made as to whether the life tenant would be obliged to keep and maintain the property at their expense or whether they would be met by the estate. That will of course depend upon whether the estate would have liquid resources available to apply towards those expenses.

Consideration will also need to be given to the flexibility in respect of the life interest and whether or not the property the subject of the interest can be substituted. If, for example, the house is sold and a replacement property is bought subject to the life tenancy and there are residual funds available after the purchase of the replacement property, is it intended that the life interest would have a life interest in the income from the balance proceeds of sale or indeed the capital? Further, would there be an ability for the Trustees to invade capital for the benefit of the life tenant? And if there is an ability to invade capital, on what basis should the discretion be exercised (e.g. liberally, conservatively or anywhere in between)?

Care will also need to be taken to ensure that following termination of the life interest, the interest in remainder is appropriately dealt with; for example, does it form part of the residuary estate to be dealt with in accordance with the terms of the Will or are there other beneficiaries to whom the interest would pass?

The Residue

How the residue is dealt with really comes back to the main objective to be achieved by the Will.

In its simplest form, the residue clause may provide for the remaining estate, after payment of all taxes costs and expenses, to be divided equally between specified beneficiaries.

If it is considered that vesting the residual estate in the specified beneficiaries personally will achieve the testator's intentions, consideration may need to be given as to any interim measures that may need to be put in place prior to the interests vesting in the beneficiaries.

For example, it may be that the funds are held on trust until each child achieves a specified age with the funds in the meantime, perhaps being available for educational purposes.

Alternatively, it may be that the funds are held in trust until all of the children have attained a specified age with the funds being used in the meantime for the education and other specified purposes for the children.

Perhaps it might be that the residuary estate is divided into 3 shares and then held on separate trusts for each child until the child achieves a specified age with the funds being available for specified purposes until the child achieves that age.

Note that if this last option is adopted, it would be prudent to include a gift over clause in the event that any of the children do not survive to attain a vested interest under the trust. In that case, the trust which fails would fall into residue and be dealt with in accordance with the residue terms of the will. Failure to address a possible failure of the trust could lead to a partial intestacy.

On the other hand, it may be that the residue is to pass to a trust to be held for the benefit of those beneficiaries.

No matter which option is appropriate, it is important to cover as many contingencies as possible to avoid any intestacies arising.

Trust Issues

If the Testator is involved with a Trust, it may be appropriate for them to nominate successor Trustees as well as a successor Appointor – the Appointor being the person who has the power to appoint and remove Trustees.

Whether those rights exist would depend on the terms of the Trust Instrument. Assuming for these purposes that the Trust Deed confers on the Testator the power to nominate Trustees, it is prudent to include an exercise of that power within the Will.

Of equal if not perhaps greater importance is the exercise of the power to appoint successor Appointors given that they will effectively inherit the power to control the Trust. When exercising that power within a Will, consideration needs to be given as to whom the power should be granted and if children are involved, to which of the children the power should pass, whether jointly or severally and upon what age.

A potential risk to be wary of is appointing children to the position when they attain a specified age. The risk is that not all children will inherit the power at the same time, meaning that those who inherit the power first could exercise the power to the detriment of the non-appointed children.

An option to avoid that problem is that none of the children inherit the power to appoint until the youngest child achieves a certain age. When the youngest child attains that age, then all children are appointed jointly and the power is exercised unanimously, thus preventing a unilateral exercise of power to the detriment of any one of the children.

Charging Clause

Where a solicitor is to be appointed as an executor and trustee under a Will, it is usual to include a charging clause. In the absence of such a provision, the lawyer would have no grounds upon which to charge the estate for services.

The nature and extent of the parameters of that charging clause can have interesting consequences. The judicial position is essentially that a charging clause will be strictly construed. While in most cases, the construction of the charging clause will not be an issue, care needs to be taken to ensure that it is sufficiently broad and extends to all activities that a practitioner will undertake in the administration of the estate if they wish to ensure they have a basis upon which to charge for those services.

Trustee Protections

In addition to a charging clause, if a solicitor is to be appointed as an executor, it is prudent to include exculpatory clauses to protect themselves in the event of loss type situations.

For example, the solicitor executor would want an indemnity from liability in respect of loss not attributable to dishonesty or willful commission of an act by that trustee known to be a breach of trust, the neglect or fault of a solicitor, bank, accountant, auditor, stockbroker or investment advisor or other agent employed in good faith by the Trustee, or indeed any claim made against a Trustee by a beneficiary or creditor which cannot be satisfied because of any resettlement or distribution to a beneficiary.

It needs to be recognized that there is a distinction between the liability as an executor/Trustee and the liability as solicitor. *Hansen v Young* [2003] 1 NZLR 83 is a recent case in that regard and indeed, there is presently one before the Courts in respect of a Queenstown law firm.

Funeral Arrangements

Although not critical to the effectiveness or indeed completeness of a Will, it can sometimes be convenient to take include the client's wishes in respect of their preference for funeral arrangements (for example, cremation, burial, scattering of ashes, burial plot expatriation of remains to somewhere else, donations to Science, organ transplant, and so on).

Codicils

The amendment to a Will can be achieved by Codicil, which specifically refers to the Will which is being amended. The execution requirements for a Codicil are the same as for the Will. Can it be taken that the Codicil does not have the effect of unintentionally revoking provisions of a Will that could lead to an intestacy?

Whether a Codicil is appropriate or whether a new Will should be crafted will by and large depend on the circumstances. For example, a lengthy Will executed by a Testator earlier in life may better be amended by Codicil to ensure that the original intentions remain intact. This can be important in respect of elderly people where they have spent considerable time and care preparing a detailed Will and when they wish to amend their Will, they are at a time in life when the complexities of the earlier issues may not be grasped as easily. It is something to be determined on the merit in each particular circumstance but should be supported by file notes.

Costs

The final issue to raise – and one which is dear to the heart of practitioners - is the costs of preparing a Will. It is a difficult issue but one which, it is suggested, the profession as whole tends to do itself a disservice.

Hopefully, the foregoing has demonstrated the care and attention that needs to be taken to prepare an effective Will. It is not something that can be churned out quickly and cheaply. Yet there seems to be a general reluctance to charge a fair fee for a good job.

Perhaps this is promulgated by free Will services being offered by some institutions. What clients often tend to forget with such arrangements is that while there may be no up front fee for the Will from these institutions, the costs in the administration of the estate can well and truly catch up for any lost up front fees.

It would be my parting submission that as practitioners we should take pride in the work that we provide and that we should render appropriate accounts for the preparation of Wills rather than treating them merely as loss leaders in the hope that we might get the estate for administration in due course. We owe it to ourselves to support the efforts we make and not to sell ourselves short. After all, the benefit of an effective Will can far outweigh the issues arising from an intestacy.

INTESTACIES

The failure to achieve and enforceable let alone affective Will can result in an intestacy, whether in respect of the whole or the estate or to part of the estate. It is not proposed to explore in any detail the implications in respect of an intestacy on the premise that the aim with this Paper is to assist in ensuring an effective Will as opposed to dealing with an ineffective Will. However, it is helpful to know general details about intestacies.

Section 77 of the Administration Act 1969 provides that Succession to real and personal estate on intestacy—

If a person (the intestate) dies intestate as to any real or personal estate and leaves the other person or people referred to in column 1 of the following table, that estate must be distributed in the manner or held on the trusts set out in column 2 of that table opposite the reference to the other person or people:

<i>Person or people intestate leaves</i>	<i>How estate to be distributed</i>
1. Husband [wife, civil union partner] or surviving de facto partner, but no issue and no parents	Personal chattels (as defined in section 2(1)): <p style="margin-left: 2em;">the husband [wife, civil union partner, or surviving de facto partner] takes these absolutely, except that any that are subject to a hire purchase agreement, are taken subject to the vendor's</p> <p style="margin-left: 2em;">rights under that agreement</p> Residue of the estate: <p style="margin-left: 2em;">this stands charged with the payment to the</p>

- husband [wife, civil union partner, or surviving de facto partner] of the amount, plus interest (at the rate prescribed under Section 39) on that amount from the date of the death until this amount is paid or appropriated
- anything that remains of the residue is held in trust for the husband [wife, civil union partner, or surviving de facto partner] absolutely
- 2 Husband [wife, civil union partner] or surviving de facto partner, and issue
- Personal chattels (as defined in section 2(1)):
- the husband [wife, civil union partner, or surviving de facto partner] takes these absolutely, except that any that are subject to a hire purchase agreement, would have been such a hire purchase agreement, are taken subject to the vendor's rights under that agreement
- Residue of the estate:
- this stands charged with the payment to the husband [wife, civil union partner, or surviving de facto partner] of the prescribed amount, plus interest (at the rate prescribed by or under section 39) on that amount from the date of the death until that amount is paid or appropriated
- anything that remains of the residue is held in trust as follows:
- a third for the husband [wife, civil union partner, or surviving de facto partner] absolutely; and
 - two-thirds on the statutory trusts for the issue of the intestate
- 3 Husband [wife, civil union partner] or surviving de facto partner, no issue, but 1 or both parents
- Personal chattels (as defined in Section 2(1)):
- the husband [wife, civil union partner, or surviving de facto partner]] takes these absolutely, except that any that are subject to a hire purchase agreement, are taken subject to the vendor's rights under that agreement
- Residue of the estate:
- this stands charged with the payment to the husband [wife, civil union partner, or surviving de facto partner] of the prescribed amount, plus interest (at the rate prescribed by or under section 39) on that amount from the date of the death until that amount is paid or appropriated
- anything that remains of the residue is held in trust as follows:
- two-thirds for the husband [wife, civil union partner, or surviving de facto partner] absolutely; and
 - a third for the father and mother in equal shares absolutely or, if the intestate leaves only 1 parent, for that parent absolutely

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| 4. Issue but no husband [partner] or surviving de facto partner | All of the estate is held on the statutory trusts for the wife, civil union the issue of the intestate |
| 5. No husband [wife, civil union partner] or surviving de facto partner, and no issue, but 1 or both parents | All of the estate is held in trust in equal shares for the parents, but if the intestate leaves only 1 parent, for that parent |
| 6. No husband [wife, civil union partner,] or surviving de facto partner, no issue and no parents, but 1 or more brothers or sisters (whether of full or half blood) | All of the estate is held on the statutory trusts for the 1 or more brothers or sisters |
| 7. No one who takes an absolutely vested interest under the trusts referred to in items 1 to 6, but 1 or both maternal or paternal grandparents, or 1 or more maternal or paternal uncles or aunts (whether of full or half blood) | <p>All of the estate is held in trust as follows:</p> <p><u>as to half:</u></p> <p>in equal shares for the maternal grandparents, but if the intestate leaves only 1 such grandparent, for that grandparent; or</p> <p>if the intestate leaves no maternal grandparent, then on the statutory trusts for the maternal uncles and aunts; or if no maternal grandparent or maternal uncle or aunt takes an absolutely vested interest under those trusts, then on the trusts on which the other half of the estate must be held</p> <p><u>as to the other half:</u></p> <p>in equal shares for the paternal grandparents, but if the intestate leaves only 1 such grandparent, for that grandparent; or</p> <p>if the intestate leaves no paternal grandparent, then on the statutory trusts for the paternal uncles and aunts; or</p> <p>if no paternal grandparent or paternal uncle or aunt takes an absolutely vested interest under those trusts, then on the trusts on which the first half of the estate must be held</p> |
| 8. No one who takes an absolute interest under items 1 to 7 | <p>All of the estate belongs to the Crown as bona vacantia, and the Crown may (without prejudice to any other powers), out of all or any part of the estate, provide for –</p> <ul style="list-style-type: none"> ▪ dependants (whether kindred or not) of the intestate; and ▪ other persons for whom the intestate might reasonably have been expected to make provision |