

## Avoiding confusion (and claims) when making charitable bequests

Many wills include one or more bequests to charitable or religious institutions. In spite of the testator's good intentions, these bequests often lead to claims when there is confusion over which institution was to receive the bequest. These mistakes often come to light only when the estate is being distributed – and they can lead to costly and time-consuming litigation when charities fight over the bequest.

Many of the claims reported in this area could be avoided if lawyers took steps to confirm that the information given by the testator is correct when the will is being drafted.

Often testators will give the lawyer a name for the charity that is outright wrong or doesn't include an indication of its corporate status. For example, the client

says "Niagara Cat Shelter" but the real name is "Niagara Falls Cat Shelter Inc."

In other situations there is ambiguity about which institution was to receive the bequest. For example, a legacy to "the ALS Society" is unclear. Does the testator intend that the bequest go to the provincial association or the national body?

Similarly, a bequest to St. John's Church can be quite confusing if there is more than one church with the same name in the region. There can also be confusion if the church or charity no longer exists. For this reason, including an address and phone number in the will can be helpful.

It is imperative that lawyers taking instructions for a will ensure that the beneficiary of the bequest exists and that

the beneficiary is referred to by its full legal name in the will. Go beyond the name of the charity and ask for an address and phone number. Cross-check the information provided to make sure the charity the testator intends the bequest to go to is properly named. There are a multitude of resources available to confirm the names and addresses of charitable entities. Many charities have websites, and most are referenced in various government and non-government directories.

Taking the time to check the proper name of an entity and confirming that information with the testator can avoid a potential negligence claim in the future.

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## Common real estate pitfalls to avoid

### **Condominium parking and lockers: Handle with care**

Your client buys a condo with two parking spaces and a locker. Usually the parking spaces and locker are separate units with their own PINs. When you're looking at the draft transfer and mortgage, make sure they include all the PINs, unit and level numbers.

Our claims experience has shown that it's easy to overlook the omission of these units from a document. Once a purchase closes, or a mortgage goes into default, it may be hard to get a correcting transfer or mortgage for the missing units.

The same principle applies when a non-condominium property has more than one

PIN. Make sure the draft transfer or mortgage includes the PINs and legal descriptions of everything your client expects to obtain. If the property is shown on a plan, this can easily be double-checked when reviewing the plan with your client.

### **Purchasing real property: What does your client have in mind?**

Many clients buy properties with the intention of building on them, or changing the use. For instance, a house with a large back yard may seem ideal for a swimming pool or garage, but sewers or other utility easements make it impossible. Or the zoning may not permit a home-based business or multiple dwelling units.

When clients bring you agreements of purchase and sale, ask what they want to do with the property. Otherwise, they may never tell you, only to find out later that they can't do what they expected – and blame you for not warning them sooner. Once you know their intentions, you can put a condition in the agreement or, if it's already signed, explain their options. They may want you to do a zoning search, or get title insurance with a future use endorsement. Get their instructions in writing. That way, there are no surprises after closing – for them or you.

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