



The Importance Of Will Drafting

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A recent tax case *N Hall and another (as trustees of Carolina Raboni Deceased) v HMRC (TC 8691)* considers whether an interest in possession arose in a “cash poor” estate where a “companion” occupied the house after the widow left her house to her five nieces and nephews. She granted her friend and companion the right to live in the house rent-free, subject to paying the insurance and maintenance costs for the rest of his life. The property was not to be sold without his consent. The companion lived in the house after she died in 2004 until his death.

Complex decision for the Executors

In the *Hall* case the First-tier Tax Tribunal (FTT) decided that, contrary to the way in which a beneficiary with a right of occupation had commonly been treated, the occupying beneficiary had not in fact enjoyed an interest in possession (IIP) in the deceased’s property under her Will. This was notwithstanding the fact that his occupation of the property was until his own death in 2017. The decision was due to several factors.

The legacy to the beneficiary was a right to occupy the named property only and did not extend to a substitute property. Apart from the property, the deceased’s estate consisted only of a small amount of cash which was insufficient to discharge the inheritance tax (IHT) liability on the deceased’s death. The executor correctly advised

the residuary beneficiaries that the property would have to be sold in order to pay the IHT, in the absence of alternative funding, but wrongly advised that the sale would be subject to the beneficiary's rights of occupation. Mindful of that advice, the residuary beneficiaries decided that the property should be retained as an investment, and that they would settle the IHT liability themselves, which they subsequently did, taking advantage of the ten-year instalment option. It was this decision which the FTT concluded made the right of occupation a licence only granted by the beneficiaries and not operating as a result of the deceased's Will.

This case is an illustration of the need when drafting Wills to consider the subsequent administration of the Estate in practical terms, which often does not happen. The decision highlights the extent of judgement calls which fall onto an Executor. Likewise, Executors must bear full responsibility for all "judgement calls".

Ironically, the beneficiaries acted with united understanding and foresight in agreeing to pay the IHT and to look at the property as an investment. Achieving unanimous agreement from five beneficiaries is unusual in practice, as is finding beneficiaries who can fund the IHT. In this quite uncommon set of circumstances, the beneficiaries made remarkable commercial decisions. By turning the Interest in Possession trust into a licence to occupy due to insufficient liquidity was surprisingly positive planning. By the presence of the IHT creditor, the companion could not enforce the right under the Will to live there.



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