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**Are you absolutely sure you are paying the
correct beneficiary the correct amount?**

Several recent claims received at Law Claims have again underlined the crucial importance of being cautious and diligent in your everyday work. These claims, both against (different) practitioners administering deceased estates resulted from mistakes made when making payments on behalf of those estates.

In one matter, there had been a long-running dispute between the estate and one of the beneficiaries as to entitlements to the proceeds of certain properties jointly owned by the deceased and that beneficiary. This dispute was settled on the basis of an agreed payment by the estate to that beneficiary, with the remainder of the estate to then be distributed equally amongst the remaining beneficiaries.

Unfortunately, when distributing the estate the Law Firm acting for the estate overlooked the need for the estate to make the settlement payment and distributed the whole of the estate to the remaining beneficiaries. This meant, of course, that those beneficiaries received an overpayment of the amount of their true entitlement but the estate still had a liability to pay the settlement amount. Whilst it is true that those overpaid beneficiaries might be required to repay the amount they were overpaid, the shortfall in the estate was a loss to the estate clearly attributable to the mistake made by the Law Firm.

In another matter, the Law Firm in question was also acting on behalf of a deceased estate. The deceased's will provided for the estate (apart from specific minor bequests) to be divided equally between four named beneficiaries, all of whom were out of the jurisdiction. The will also provided that if any of the named beneficiaries pre-deceased the testator, but left children surviving, those children were to share equally in that beneficiary's share of the estate. One of the named beneficiaries had in fact predeceased the testator, leaving two children surviving.

The proper distribution of the residue of the estate was therefore 25% to each of the surviving named beneficiaries and 12.5% each to the children of the deceased named beneficiary. The Law Firm however, by mistake, distributed 20% of the residue of the estate to each of the named surviving beneficiaries, and 20% each to the children of the deceased named beneficiary.

Again, this meant that the children of the deceased named beneficiary had been overpaid, and the surviving named beneficiaries had been correspondingly underpaid. And again, whilst it is true that the overpaid beneficiaries might be required to repay the amounts they were overpaid, the estate was liable to the surviving beneficiaries for the amounts they were underpaid, which were a loss to the estate clearly attributable to the mistake made by the Law Firm.

The obvious solution is to carefully check and double-check all the liabilities of the estate before sending out any distributions and to be vigilant to make sure that all beneficiaries (especially residuary beneficiaries) are being paid their true entitlement according to the will. It is also prudent to obtain instructions in writing from the executor (s) of the estate before any money leaves your trust account.

The facts of these two recent claims show how easy it is for even experienced practitioners to make mistakes and how important it is to always exercise care.

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Deputy Director (Law Claims)

Correction

The Riskwatch article "*Lessons for Practitioners involved in Wills & Estates*" published in the November 2015 Bulletin referred to the decisions of Justice Stanley in *In the Estate of Istvan Molnar* [2016] SASC 55 and *In the Estate of Istvan Molnar (No 2)* [2016] SASC 159.

That article was based on the version of the *Molnar (No 2)* decision available shortly after that decision was published. The article referred to the executors representing themselves in the proceedings "*for an ulterior purpose*". This was taken from paragraph [39] of the Judgment as originally published, however it has been pointed out that the Judgment as published on Austlii now does not refer to any purpose, rather the Judgment is now to the effect that the executors represented themselves "*unnecessarily*".