



High risk practice areas for law firms

Wills, Trusts & Probate

Our team

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About Miller

Since Miller was founded in 1902, we have gone from strength to strength because of our unwavering focus on delivering an exceptional standard of service to our clients.

We are known for doing the right thing, delivering on our promises and working as one team.

Today, we are a leading specialist (re)insurance broking partnership, headquartered in London with more than 650 people across our UK and international operations.



Risk awareness and mitigation

Issue

Resolution

Drafting errors and ambiguity in relation to charitable gifts. Charities will always pursue maximum recovery as a beneficiary.

Ensure drafting clarity and check for any ambiguity and confusion.

Challenges to capacity of testator or allegations of undue influence seeking to overturn last Will can become a claim for costs of a dispute against the Will drafter.

Full note of Will instruction required to ensure documentary evidence of questions asked and steps taken to satisfy the fee earner of capacity and independence, particularly where the testator has a carer who is also a child and beneficiary.

Modern complexities of family dynamics and situations make challenges to the Will more likely.

Take additional care to ensure the devolution of property has been discussed and parties are aware of changes and that the Will is clear.

Executor fraud in Wills.

Ensure sufficient due diligence in place for identification of the correct beneficiary.

Ineffective Will due to failure to sever joint tenancy.

Land Registry checks as to how property is actually held made as a matter of routine.

Missing Wills.

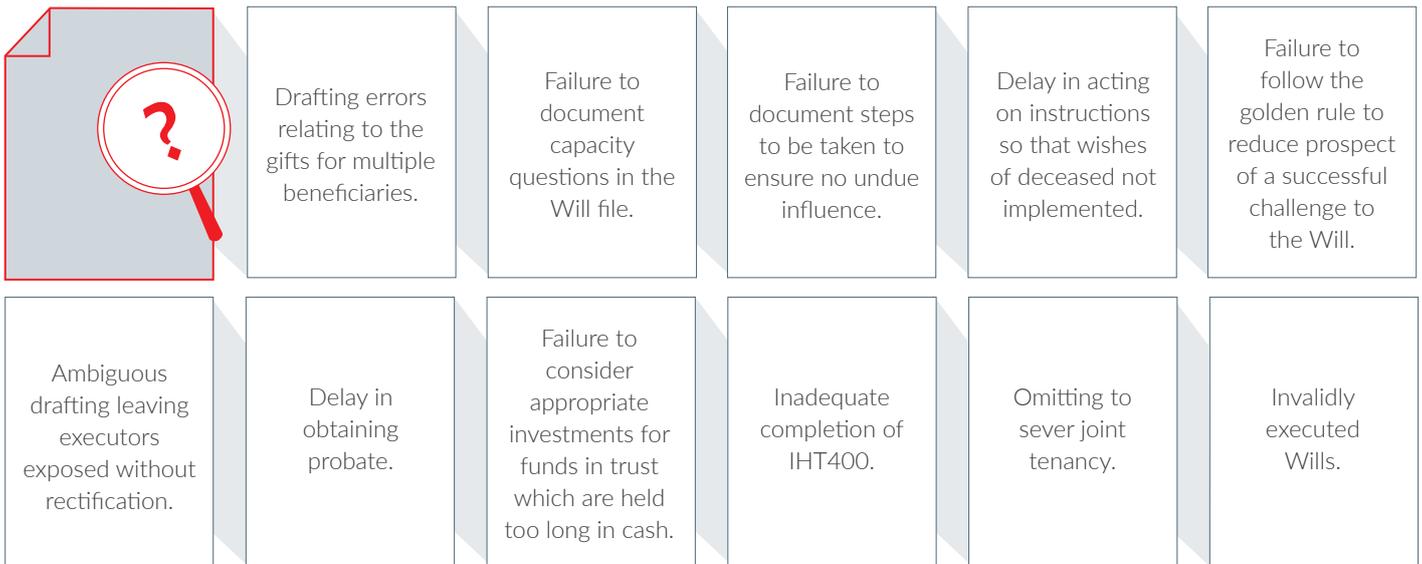
Robust processes to ensure records of Wills are retained and updated regularly.



Miller is proud to hold Chartered Insurance Broker status, the industry gold standard awarded by the Chartered Insurance Institute (CII). This title demonstrates our professionalism, client focussed approach and commitment to excellent service standards.



Common problems



Case study

The Insured was instructed by a Client to prepare a Will. At the time of the Insured's instruction, the Client was suffering from a terminal illness.

The Insured prepared a Will in draft and sent the draft to the Client for her review/ amendment. The Client made some amendments to the Will, signed & dated it and returned it to the Insured. The Will was not witnessed, and was therefore not validly executed.

The Insured returned a further draft to the Client a few weeks later incorporating her amendments, but failed to inform the Client that the previous draft Will she returned was not valid because it had not been witnessed. The Insured also failed to follow up on instructions in respect of the amended Will, and two months later was informed that the Client had died. The Client's Estate has now passed by intestacy to her surviving husband, when it had been the Client's intention that her Estate should pass to her children from a previous relationship. The children have lost their intended inheritance and have a claim against the Insured for that loss.

Upon notification to their Insurers, the Insured advised that the fact the Client was suffering from a terminal illness was not contained within their files. The Insured was made aware of this through a conversation with the fee earner.



Issue

The Insured's failures include poor record keeping, unclear file notes and a lack of appropriate follow up (diary management) and omitting to provide a clear explanation of the requirements to execute a valid Will.

Risk management

The use of checklists, prompts and regular refresher training as to the importance of record keeping could have avoided the claim.