

Video Will Admitted To Probate For First Time In NSW

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In the recent case of *Re Estate of Wai Fun Chan* [2015] NSWSC 1107, decided on 7 August 2015, the NSW Supreme Court granted probate of a 'video will'. The Judge deciding the case commented that a Senior Deputy Registrar of the Court had informed him that so far as he was aware, the Court had never before admitted a video will to probate. The deceased recorded her testamentary intentions on a DVD recording and the Court found that she intended that recording to operate as a codicil to her formal written will.

However, the Court warned against the dangers of adopting such a casual approach to will making, saying that 'the costs of satisfying the Court that [the necessary requirements] have been made may be an unnecessary burden on the will-maker's deceased estate..... and the informality of expression that commonly characterises an oral statement may be productive of uncertainty as to the terms, or proper construction, of a video will, with a consequential, heightened risk of litigation following the death of the will-maker. On that account, a casual approach to recording testamentary intentions in a video will is not recommended". A beneficiary had also assisted with the recording of the will and had therefore 'witnessed' the will, which caused further difficulty and costs.

Although this was the first time that the Court admitted a video will to Probate, it was not the first time that a dispute about a video will had come before the Court. We previously defended a matter in which the plaintiff tried to have a video recording proved as will. Although the Judge agreed that a video recording could constitute a will, we were successful in persuading the Court that the video recording only provided an explanation of the deceased's written will and was not a new will in itself.

For advice on making a will, please contact our Wills and Estate Team.

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