

INHERITING A LEGACY

GLOBAL HEIRSHIP FIRMS MUST ENSURE BEST PRACTICE WHEN CONNECTING WITH NEXT OF KIN

Much can be lost in translation when legal firms and their support services have to conduct business across borders. Some of this confusion can be a profitable oversight for some companies that should know better. The growing global heirship (genealogy) business, where legal advisors across the world, aim to connect next of kin to inheritance, is no different.

► **Danny Curran**

MALPRACTICE AMONG CERTAIN GLOBAL GENEALOGISTS AFFECTS FIRMS ACROSS CONTINENTS. To this end, it has been noticed in a number of cases where next of kin of individuals who are deemed to be in the final stages of life, are at risk of signing away a large proportion of their inheritance due to the actions of unscrupulous genealogists – who do not disclose the fact that their dying relatives are still living. Certain heir hunters, and their counterparts, are resorting to this tactic as a means of:

- Allowing them to secure an exclusive contract, charge larger fees and eliminate other competing genealogists from the process.
- Enabling the statutory 14-day cancellation right available to beneficiaries to pass before legitimate firms of heir hunters can contact the family, offering more competitive rates, which would normally only happen after the death of their relative.

Rather than telling the beneficiaries up front that their relative is not yet deceased, the unsuspecting heirs may be led to believe that the relative has passed away.

Rise of 'conservatorship' affecting legal operators across Europe

'Conservatorship' – the legal practice which has caused this issue – does not exist as a legal condition in the UK under this name, but the IAPPR notes that some firms may not even mention the word 'conservatorship' until after heirs have signed the onerous contracts. The closest reference in the UK is the Appointment of a 'Deputy' or 'Appointee' – and these cases are often dealt with by the Court of Protection.

Conservatorship, meanwhile, is a legal concept in the US. A guardian or a protector is appointed by a judge to manage the financial affairs and/or daily life of another due to physical or mental limitations, or old age. A person under conservatorship is a 'conservatee' a term that can refer to an adult. A person under guardianship is a 'ward', a term that can also refer to a minor child.

The conservator may be only of the 'estate' (financial affairs), but may be also of the 'person' wherein the conservator takes charge of overseeing the daily activities, such as health care or living arrangements of the conservatee.

According to Helen Clarke, partner of Pitmans LLP solicitors, "Conservatorship does not apply as a legal concept in the UK and the entitlement of a beneficiary under

a deceased's intestacy does not come into effect until the death of the intestate.

"The practice of the heir hunters in the Neufeld case therefore highlights the need to proceed with caution when approached by an heir hunter in particular with regard to any contract that is being signed. We would always advise that care is taken and legal advice should be sought if there is any uncertainty so that the position in law of the individual concerned is properly understood."

What could be a convenient oversight by certain genealogists across borders could tarnish the image of honest heir hunters. Bringing these issues to light and educating consumers at the receiving end is the responsibility of all who offer heirship services.

Ideal way

Under usual circumstances, heir hunters will only work on an estate where the individual is deceased, whereupon a number of companies offering heirship services may approach the beneficiaries offering their assistance.

Established and ethical heir location firms, in both the UK and the US, have denounced the process of 'signing up' heirs to an estate whilst their relative is still alive. They should

Last Will
(and)

Testament

know better than to deviate from usual practices in this way, yet we are seeing a rise in such cases resulting in next of kin being deeply unhappy and upset when they discover the truth.

Advice to individuals being contacted by heir hunters about relatives abroad is to read every word very carefully before signing anything. Legal advisors in this field should be offering this view to potential beneficiaries as a matter of course.

Case in point

The case which has brought the underhand tactics to light is the \$2million estate of Gillian Neufeld of Los Angeles, California whose next of kin reside in the UK. The

heir hunting firm in question was looking to secure the sizeable 30 per cent fee ahead of death. When contacted by another firm after the death of Mrs Neufeld the family were shocked to learn that she was actually still alive when they had signed up. Furthermore, the 30 per cent fee, amounting to around £500,000 in this instance, is well above the usual rate charged by heir hunters in the UK.

Continental viewpoint

Klaas Zondervan, lawyer and founder of Luminis Probate Research in the Netherlands, commented: "Across Europe, we are seeing an increasing number of cases due to movement and immigration post World War 2 – both across the continent

and to America. With the impending death of these individuals, many died intestate without children, and have no next of kin in their adopted countries, their heirs are only to be found in their countries of birth."

Distance in these case, is not merely measured geographically. While conservatorship is a known phenomenon in the Netherlands, the legal framework for this in the adopted country may differ significantly. It is imperative before signing any contract with a probate genealogist, that one seeks adequate legal advice from a professional familiar with this legal framework. In my opinion, the reprehensible practice of signing up heirs before the individual has passed away is unbecoming of any legal professional. ●

Danny Curran is chair of the International Association of Professional Probate Researchers, Genealogists & Heir Hunters (IAPPR) and founder of Finders International. Set up in 2016, IAPPR is an association for highly-experienced professional companies that provide reassurance for those using their services and a forum for industry advice and media consultation. It actively promotes the interests of professional probate researchers, genealogists and heir hunters as it considers these professionals are important members of the legal services industry.

