



# Giving up the ghost

Reliance on family testimony – without independent verification – to establish information about the devolution of an estate is a path that can lead to errors and omissions. ‘Who you gonna call?’ asks **Danny Curran**

DANNY CURRAN FOUNDED [FINDERS INTERNATIONAL](#) IN 1997 AND THE COMPANY NOW HAS OFFICES IN DUBLIN, LONDON AND EDINBURGH



In Ireland, perhaps more than in most countries, we know our family – or at least we think we do. Numerous cases of intestacy are being wrongly distributed every year through failure to independently check and verify who the next of kin to the deceased really are and, as a trusting nation, we often take the word of family members on this point.

However, these days, while we are assiduously checking the identities of clients and permanently on the lookout for fraud and money-laundering, we are still routinely handing out shares of sometimes extremely high-value estates to (alleged) next of kin because they tell us they are “the only next of kin” or that “nobody else is entitled to share”.

## Bring up the bodies

My firm has seen thousands of avoidable errors in distribution in the last 21 years; the consequences are complicated and far-reaching – and incredibly straightforward to avoid.

We have seen undocumented next of kin coming forward, without the

traditional proof of birth certificates showing their parents’ names, but using DNA evidence, facial-recognition reports, scrawled notes from orphanages and, recently, we experienced, first-hand, a case where we assisted our client in obtaining an exhumation order, as we were convinced by his story that he was the deceased’s son, but had no proof.

We had to wait for the summer, as apparently exhumation in inclement weather can cause some serious issues from land slippage and for DNA sampling, but the result came back that our client is “53 million times more likely to be the deceased’s son than not”. Recovery of the estate – of nearly €1 million in value – is currently underway.

Other claims arise from the branches or members of families who emigrated, and the known family have forgotten (or deliberately ‘forgotten’ perhaps) or not considered that these persons may have a claim to a share of the estate, and so have not declared this information to the solicitor. Ireland and emigration are two words that often are heard in the same sentence. The estimated ‘real’

## AT A GLANCE

- Checking the entitlements to, and distribution of, estates are complex tasks that should be handled as professionally as all other aspects of a solicitors’ work
- Numerous cases of intestacy are being wrongly distributed every year through failure to independently check and verify who the next of kin to the deceased really are
- The consequences of errors in estate distribution are complicated and far-reaching – but incredibly straightforward to avoid



PICTURE: SHUTTERSTOCK

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population of Irish descendants in the US alone is over 70 million.

Finally, we have the problems caused by the ‘family historian’ who, with all good intentions, enjoys looking at the family tree. However, their information must not be relied upon, and a simple check of their work

(for a modest fee) by a professional firm of probate genealogists should be carried out in order to either verify their work or identify grey areas of the family tree to be investigated.

In France and Germany, probate research and verification of intestate estates using

professional firms is considered a vital role, on a par with the legal profession, and often an essential part of the estate administration process – so why is it in Ireland that we seem to find it harder to place the probate genealogists’ role fairly and squarely in the estate administration process?



## IT SEEMS THAT THE LADY IN QUESTION HAD SIMPLY DISOWNED HER NEPHEW MANY YEARS EARLIER AND DIDN'T RECOGNISE HIM AS PART OF HER FAMILY

The fact that an industry is unregulated is not necessarily a problem. We have enquired several times about various Government initiatives to see if certain bodies would include the probate-research industry in their regulatory regime, but, as with many other industries with a relatively low combined turnover, the Government is reluctant to get involved.

So, we are left with self-regulation and, in many cases, this can be very useful as a guide to instructing a firm. However, self-regulation and memberships of associations also come with caveats and conditions.

Looking at the positive side, any firm that subjects itself to any form of third-party scrutiny or self-regulation must feel a degree of confidence that it is 'doing the right thing', and my own firm has numerous forms of compliance that hopefully will ease the minds of instructing solicitors and members of the public alike – the latter, remember, must feel reassured that the probate-research firm are genuine and not operating a complex scam.

Word of mouth and reputation are always good starting points, but make sure you are dealing with a professional company.

Firms can appear to list 'offices' around the world just by placing keywords on their website – 'Paris, Rome, Athens, New York' – and can of course use an impressive serviced

office address in a large city. This is not unique to the world of probate research, of course.

### The mirror and the light

The reliance on family testimony, without independent verification, to establish information about the devolution of an estate is clearly a path that leads to errors and omissions. There is still a degree of alarming naivety in this practice, which we see happening frequently.

I recall an intestate estate of around €400,000 I worked on many years ago, where the solicitor wanted a 'simple verification' that his client was the sole heir to the estate. The client was an elderly lady who nobody had any reason to doubt when she claimed to be her late brother's sole surviving next of kin. However, in yet another extraordinary tale (we have many), it seems that the lady in question had simply disowned her nephew many years earlier and didn't recognise him as part of her family. His 'crime' in her eyes was to drop out of society, grow a beard to his waist, and wander around his housing estate shouting and swearing at everyone ('bringing shame on the family'). In fact, once we had identified and located him, it was established he had, for many years, suffered from a mental illness. When found,

he was one of the gentlest and kindest middle-aged men you could imagine. In this case, half the estate rightly passed to the nephew we had traced.

I have simply lost count of the number of children, siblings, and half-blood siblings that have been overlooked or forgotten by clients when referring cases to us. It's not always deliberate, I should add; families do lose touch, large families forget how many relatives they have, children are born out of wedlock and to single parents, and legal adoption has allowed the adoptive family to legally inherit.

### A change of climate

I have been emphasising and endlessly stressing the importance of a 'comfort' policy against missing or unknown beneficiary claims for many years.

A report from a recognised professional firm of probate researchers is required, as insurance companies may not accept anything else as evidence. Using a recognised firm will often mean that an insurance policy is instantly approved, saving many hours of practitioners' time having to get the required evidence together to satisfy the insurance company, or shopping around to find the right terms within the policy at the right cost.

Of course, the basic professional indemnity insurance is a must, and things may go wrong from time to time – that's life – but the important thing is to be covered.

There are four basic fee models available from most professional probate-research firms, and all are perfectly acceptable. Choice is imperative in order to cover a variety of situations.

Again, using an established, reliable, and trustworthy company is probably more important than the charging method.

The four main options are:

- Contingency fees (where a beneficiary signs a percentage-based agreement with

## Q FOCAL POINT

### A LARGER FAMILY ALMOST OVERLOOKED

A Dublin solicitor referred an estate of €350k to us for checking, pre-distribution. Their client said that they had two siblings and that their uncles and aunts had either never married, or had married but had no children.

It turned out that the client had nine siblings rather than two, and all of their

aunts and uncles had married and had children. Therefore, there were 26 beneficiaries rather than the three that had been mentioned initially.

When quizzed about this, the client said that the other family had not visited the deceased in the nursing home and, as a result, should not inherit.



PIC: SHUTTERSTOCK



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- the probate-research firm),
- An estate/trust contingency fee, where the executor agrees a percentage-based fee from a named beneficiary's entitlement,
- A budget fee paid by the estate, and
- A fixed fee paid by the estate.

Contingency fees are the most popular, as they are seen as fairer in many circumstances, being payable only on a successful distribution, and only from shares due to unknown heirs (existing clients pay nothing); but an agreed budget or a fixed fee at the expense of the estate may be more appropriate, depending on circumstances.

Contingency fees are often the only option when working on an estate where there are no known next of kin at all, as there is nobody authorised to pay a research fee or make advance arrangements about the probate-research firm's fee from the

## Q FOCAL POINT

### FAMILY NOT RELATED IN THE WAY THEY THOUGHT

The client visited a solicitor in Kerry with a view to becoming administrator for her "uncle's estate", but when we gathered the relevant birth, death and marriage records, it turned out that the deceased was her grand-uncle and not her uncle.


The client and her siblings thought that their father was the deceased's brother, but he was, in fact, his nephew.

Their father was, in fact, the son of the eldest sibling to the deceased; a daughter, who had in turn been reared as the youngest child of the grandmother's family.

The solicitor had to revert to his client and explain that she could no longer be administrator and, in fact, she would not be entitled at all under Irish intestacy law.

estate. If a solicitor has no instructions, they cannot agree the fee based on the possibility they may receive instructions once next of kin are found.

Remember: checking the entitlements to, and distribution of, estates are complex tasks

that should be handled as professionally as all other aspects of a solicitors' work. 

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