

## **Loss of Will May Not Preclude Claim**

The loss of the original of a will does not always mean that the will cannot be accepted for probate, as is illustrated by a case involving a gay couple, Mark Rowe and Barrie Clarke, who had lived together for several years.

In 2000, Mr Clarke had made a will passing his entire estate to Mr Rowe. A copy of the original of the will was sent to Mr Rowe's mother. Mr Clarke died in 2005. It would appear that he was a rather disorganised man and the original of his will was never found. After his death, Mr Clarke's brother, Kenneth, had come to the house and taken away several documents, although whether the original of the will was amongst them is not known. As next of kin, the brother obtained a grant of administration of the estate on the grounds that Mr Clarke had died intestate.

Normally, when the original of a will cannot be found, the presumption is that it has been destroyed by the person who wrote it. In such cases, an earlier will may be accepted as valid, if one exists. If not, the estate will be distributed in accordance with the laws of intestacy. In this case, dying intestate would mean that Mr Clarke's family, not Mr Rowe, would inherit the whole of his estate.

However, in this case, it was known that Mr Clarke and his brother Kenneth were estranged from one another and there was no reason to believe that Mr Clarke's affection for Mr Rowe had in any way diminished since the will was written. Accordingly, the judge ruled that although on the balance of probabilities Mr Clarke had lost or destroyed the original of the will, or it had been amongst the documents removed by Mr Kenneth Clarke, there was no evidence that his intentions had changed since he made the will. Accordingly, the copy of the original document held by Mrs Rowe was accepted as valid and Mr Kenneth Clarke's grant of probate voided.

Just because the original of a will cannot be found, it is not necessarily the case that a copy of the document will not be accepted as valid if the circumstances warrant it. However, we do recommend that you ensure that your will is kept in a safe place at all times and that family members know where it can be found. We are happy to hold the original of your will in safe keeping should you request it.