

WILLS

When a Beneficiary Dies Before the Deceased



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Where the beneficiary under a will dies before the deceased, the will might direct an alternate beneficiary. The Estate Trustee should always review the will to determine who is entitled and, therefore, should be served with the *Application for a Certificate of Appointment of Estate Trustee*.

When the beneficiary dies before the deceased, the ‘anti-lapse’ provision in Section 31 of the Succession Law Reform Act could also be triggered.

This provision applies when a beneficiary who is the testator’s child, grandchild, or sibling dies before the testator. It can have the effect of enforcing the beneficiary’s gift and having said gift equally distributed amongst the deceased beneficiary’s spouse and/or issue alive at the time of their death, with the spouse and/or issue being unaffected by any outstanding debts they have been incurred at that time. It is often the case that a testator has forgotten to update their will to account for the death of one of their beneficiaries, so Section 31 seems to be in place to protect the interests of the beneficiary’s family from a testator who has not updated their will after the occurrence of a death of one of their beneficiaries.

When a beneficiary dies shortly following the deceased but within the survival period in the will.

Most wills have a survival clause. This clause will say how many days a beneficiary needs to survive the testator to be entitled to their inheritance. A typical period is 30 days. When a beneficiary dies within the survival period stated in the will, the beneficiary will be deemed to have died before the deceased. As a result, the beneficiary would not have an interest in the estate (if the will directs an alternate beneficiary). Therefore, it would not be necessary to serve the deceased beneficiary or the beneficiary’s estate with the *Application for a Certificate of Appointment of Estate Trustee*.

When a beneficiary lives past the survival period in the will.

When the beneficiary dies after the deceased but lives beyond the survival period, you will need to review the will to determine who is entitled to the beneficiary’s share of the estate (and therefore who should be served with the *Application for a Certificate of Appointment of Estate Trustee*). For example, a will may provide that the beneficiary receives a gift only if they survive a certain other person. In such a case, the beneficiary’s gift may lapse,

and other beneficiaries may be entitled to the gift.

Unless the will provides otherwise, the beneficiary’s share of the estate may pass to the beneficiary’s estate. Therefore, the gift to the beneficiary would become part of their estate. In turn, the beneficiary’s estate would be distributed according to their will or, if they don’t have a will, it would be distributed under the rules of intestacy (pursuant to the Succession Law Reform Act, Part II Intestate Succession).

When a will does not have a survival clause.

Where the will does not have a survival clause and a beneficiary dies after the deceased but before the estate is distributed, the beneficiary’s share of the estate will go to the beneficiary’s own estate, and their estate should be served with the *Application for a Certificate of Appointment of Estate Trustee*.

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