

Gifts by Will - Age Limits Apply

Many wills these days include a clause that sets a time or date when a beneficiary is entitled to a gift under the will. If the will provides no age limit, a child will receive the gift at the legal age of 18 years which many parents believe is too young.

In a recent case, the testator's niece, aged 22, sought an early payment of the residuary estate to her, and so challenged in the court the following clause in the will: "the balance to vest in my said niece upon her attaining the age of thirty (30) years". She relied on the rule in *Saunders & Vautier* (1841) 4 Beav 115, that an adult beneficiary who had a vested interest in property may require a transfer of the property to him or her.

The court decided that the clause was ambiguous. If the clause had said "upon her attaining the age of thirty (30) years", it would have stood. But the court held that because the niece was the sole beneficiary, and to avoid an intestacy if she died before reaching 30 years, the term "vest" meant "vest in possession", and so the trust could be terminated. The niece received the gift under the rule in *Saunders & Vautier*. (*Austin v Wells* [2008] NSWSC 1266 (28 November 2008)).

ABOUT US

At msl we work closely with other professional advisers, such as accountants, property valuers and financial advisers to ensure the best possible results for our client's long-term future.

Our interest is on minimising fees and taxes that may be deducted from an estate, that assets are effectively managed if a person is incapacitated in any way, and that medical decisions, property and investments are properly handled.

Our support extends to all levels of estate planning, structures and family asset protection, including commercial business interests.

Binding nomination – superannuation

Providing for the distribution of superannuation benefits and relying upon binding nominations require the utmost care.

In February 2009, the Supreme Court of Queensland considered a purported binding nomination. The deceased had sent a letter to the superannuation fund trustee (the deceased and spouse were directors of the company trustee) of his self-managed superannuation fund stating that the death benefit was to be paid to his executor for inclusion in the assets of his deceased estate.

The deceased's daughter applied to the court for a declaration that the letter was a binding nomination.

The court decided that the letter was not a binding nomination because it did not comply with the superannuation trust deed, it did not state whether it was binding or non-binding and it did not comply with the form provided by regulation 6.17A, *Superannuation Industry (Supervision) Regulations* 1994. (*Donovan & Donovan* [2009] QSC (16 February 2009)).

For more information please contact msl on 07 5597 8888 or info@mslawyers.com.au or visit our website www.mslawyers.com.au

CONTACT US

BRISBANE

Level 10, 410 Queen Street
Brisbane QLD 4000
GPO Box 3246 Brisbane QLD
4001 Australia
T 61 7 3229 6099
F 61 7 3226 9001
E brisbane@mslawyers.com.au
W www.mslawyers.com.au

GOLD COAST

9 Ouyan Street
Bundall QLD 4217
PO Box 9073 GCMC QLD 9726
Australia
T 61 7 5597 8888
F 61 7 5597 8899
E info@mslawyers.com.au
W www.mslawyers.com.au

OUR DIVISIONS

- Australian Migration Lawyers
- Gadens NMS QLD
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