

## The Property Lawyer

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Cheryl Simes, *'Misrepresentation by law firms in estate matters.'*

## LETTER TO THE EDITOR

# Misrepresentation by law firms in estate matters

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LAWYERS FREQUENTLY CLAIM TO BE 'acting for the estate' when the deceased died intestate and no administrator has yet been appointed.

This can be a misrepresentation. It is simply false, unless it represents unanimous instructions by all beneficiaries. It breaches section 9 of the Fair Trading Act 1986, if stated in a communication intended to persuade someone to do something.

The firm may hold funds for the deceased. That does not mean the firm is acting for the estate. The firm is a bare trustee.

The firm may have acted for the deceased in the past. Again, that does not mean the firm is now acting for the estate. Those instructions ceased when the deceased died.

Instructions may have come from someone to apply for letters of administration. That too does not mean the firm is acting for the estate. The firm is acting for the person who has instructed them. If letters of administration are indeed granted, the costs of obtaining that grant are payable from estate funds. If the application is unsuccessful, they are not.

The firm may have met with beneficiaries and discussed matters relating to the estate. Even that does not mean the firm is acting for the estate, unless all the estate beneficiaries have unanimously agreed to instruct the firm. This needs to be clear before fees are

incurred. Fees may legitimately be reimbursed by the estate once an administrator is appointed, if the fees are a reasonable estate expense. The administrator will need to make that assessment. It is not automatic.

Until letters of administration are granted, nobody has the authority to instruct a lawyer to act for the estate - unless such instructions are given unanimously by all beneficiaries.

Once letters of administration have been granted, the administrator has the authority to instruct a lawyer to act. This is not compulsory! If the administrator is told they must instruct a law firm to administer the estate, such a communication breaches section 13(h) of the Fair Trading Act 1986.

The administrator has the right to choose how much they do themselves, how much professional assistance they require, and which professionals to use. That may well be an accountant rather than a lawyer. It may even be the Public Trust's 'Executor Assist' service. Law firms do not have a monopoly over estate administration.

This letter is prompted by several recent premature assertions that law firms are acting for intestate estates. I trust the readers of the Property Lawyer are better informed and unlikely to make this mistake themselves. I hope they will pass the word to their colleagues. ■

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