

Your Ref

Our Ref: Succession Law Committee

The Hon. Jarrod Bleijie MP
Attorney-General and Minister for Justice
Department of Justice and Attorney General
GPO Box 149
Brisbane QLD 4001

By Post and Email to: [REDACTED]

19 November 2012

Dear Attorney

We refer to telephone discussions between the Department and the Society in relation to the issue of ademption.

Powers of Attorney Act 1998 (QLD)

The Society observes that s107, *Powers of Attorney Act 1998 (QLD)* (POA) allows a person to apply to the Supreme Court for compensation out of the principal's estate in circumstances where a person's benefit in the estate is lost as a consequence of a sale or other dealing with the principal's property by an attorney of the principal.

In our view, the ratio decidendi of *Re Viertel* is encapsulated by s107, POA, with the only difference being that *Re Viertel* establishes quantum and certainty for remedy whereas s107, POA sets up the machinery to apply for compensation.

The focus of the Society's concern is the trend away from *Re Viertel* (and s107, POA) and the uncertainty which will undoubtedly arise. We are concerned that Courts may instead follow the dicta in *RL v NSW Trustee and Guardian* [2012] NSWCA 39 and find that the exception to ademption can only apply in very limited cases (for example fraud or tortious acts undertaken by the attorney and unknown to the testator principal.)

In our view, this is not the spirit of s107, POA and *Re Viertel* and we consider that legislative action may be needed to assist and provide certainty going forward.

To that end, we respectfully seek to meet with you to discuss how this objective may be reached. If this proposed course of action is agreeable, can we suggest that your office could contact our Policy Solicitor, Louise Pennisi on [REDACTED] to arrange a meeting.

[REDACTED]
Ian Brown
Vice President