

update

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Estate Planning: The importance of having a Will

This is particularly appropriate if you are about to marry, separate or divorce.

Marriage

If you are about to get married, you should be aware that any existing Will is revoked by the subsequent marriage of the willmaker, unless the Will was made in contemplation of marriage. The appointment in the Will of the willmaker's spouse as executor and certain gifts to the willmaker's spouse are, however, preserved.

Separation

Separation has no effect on the existing Wills of separated spouses, even if the spouses have divided their assets under a property settlement. The Wills remain valid. It is therefore particularly important for separating spouses to make new Wills.

• Case Study

Joe and Josephine married in 2001, then separated in 2006. In the midst of an extremely bitter divorce fight, Joe dies, leaving only the Will made by him shortly after their marriage in which he had left everything to Josephine.

Although Joe and Josephine had been separated for more than a year, Joe's 2001 Will is still valid. As he hadn't got around to making a new Will, Josephine inherits all of Joe's assets under the Will.

Even if Joe died intestate, Josephine would still have inherited a large share of his assets

under intestacy provisions.

• Case Study

Pete and Peta separated in 1992. They completed a property settlement in 1993 and Peta moved to Queensland with half of their joint assets. Pete and Peta never divorced.

In 2006 Pete died, leaving only the Will made by him in 1983 leaving all of his assets to Peta. As Pete never made a new Will, Peta inherited the rest of Pete's assets under his 1983 Will. Their only child, Petronella – who remained in Melbourne and had been very close to her father – receives nothing.

Divorce

Importantly divorce does not have the effect of revoking the whole of a Will. It revokes gifts to the former spouse, but leaves the rest of the Will unrevoked, provided either:

- the Will is made after 20 July 1998; or
- the Will is made before 20 July 1998 but the decree of the divorce or annulment became absolute after 20 July 1998.

For this reason, recently divorced individuals should immediately review their Wills.

• Case Study

Anthony and Antoinette married in 1976 and made Wills leaving all of their assets

to each other or, if both of them died, to their children.

They divorced in 2004 and Anthony became estranged from his two adult children (who were very bitter about the divorce). Anthony never made a new Will even though he had entered into a new relationship. Anthony died in 2006 shortly before he was due to remarry.

Anthony's divorce meant that the gifts to Antoinette in his Will were revoked, but the divorce did not revoke the gifts to his two adult children. Anthony's de facto spouse does not benefit at all.

De facto spouses

De facto spouses are not covered by current Victorian legislation. In order to avoid expensive litigation, parties entering into or ending a de facto relationship should make sure they have up to date Wills in place.

For more information

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