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PROPERTY (RELATIONSHIPS) ACT 1974 & WILLS

The Property (Relationships) Act 1974 ("the Act") provides that a spouse, civil union partner or de facto partner can either decide to:

- (a) Make an application for division of relationship property under the Act; or
- (b) Receive their share of the estate as per the will.

If the spouse or partner is receiving all the residue of the estate, then is likely that the spouse or partner would decide to receive their share of the estate as per the will.

However, where a spouse or partner is only receiving a share of the estate and could be entitled to more under the Act than what they are receiving under the Will, then the spouse or partner may decide to make an application for division of relationship property under the Act.

Example

Take the example of Claire and Matt. Claire and Matt have been married for 20 years. It is Matt's second marriage and he has three children from his first marriage.

Matt's Will provides as follows:

- (a) Claire is to receive \$20,000.00; and
- (b) The remainder is to be divided equally between Matt's three children.

The assets of Matt's estate are 1 million dollars in total and consist of:

- (a) His superannuation - \$200,000.00; and
- (b) The family home - \$800,000.00.

The family home was purchased during their marriage but due to the Bank's requirements was in Matt's sole name and Matt started contributing to his superannuation during their relationship. Therefore, both are relationship property under the Act and can be subject to an application for division under the Act.

Any relationship property is generally split 50/50. Accordingly, under the Act Claire is entitled to 50% of Matt's estate, which is \$500,000.00.

In this instance Claire would make an application for the division of the relationship property as she would receive \$500,000.00 rather than the \$20,000.00 she has been left in the Will.

Can an ex-spouse or partner make an application?

An ex-spouse or partner can make an application for division of relationship property, if relationship property matters have not been settled.

For relationship property matters to be settled the couple need to have entered into a separation agreement setting out how relationship property has been divided between the couple or there needs to be a court order to this effect. Until such time as this occurs, then the ex-spouse or partner can make an application.

Take the example of Margaret & Peter. Margaret and Peter have been separated for ten years. The family home was in Peter's name. Peter and Margaret agreed that Peter would pay Margaret x amount to settle everything, however, they never entered into a separation agreement. Peter at the time of his death still owns the family home and he has left his estate to his parents.

As Peter and Margaret never signed a separation agreement, Margaret can make an application for division of the family home under the Act.

20 MINUTE FREE

WANT to review your Family Trust structure? THEN call us and take advantage of our 20 Minute Free interview