



By Lloyd Collins
lloyd@collinsmay.co.nz
 DD: 576 1403

Eugene Collins
eugene@collinsmay.co.nz
 DD: 576 1407

Amy Haste
amy@collinsmay.co.nz
 DD: 576 1412

Hannah Nimot
hannah@collinsmay.co.nz
 DD: 576 1409

Simone Seddon
simone@collinsmay.co.nz
 DD: 576 1411

Lisa Grant
lisa@collinsmay.co.nz
 DD: 576 1417

If you would like any of our previous newsletters or any of our free booklets on Wills, Family Trusts, Relationship Property of Business Law please email us or visit our website at www.collinsmay.co.nz

I DON'T HAVE A WILL—WILL THIS BE AN ISSUE?

The Public Trustee in New Zealand undertook a survey during 2012 and discovered that 50% of Kiwis don't have a Will. The survey concluded that many people don't think it is an issue because they incorrectly presume that their assets will pass to their partner. Unfortunately it is not as simple as that and people dying intestate has led to a huge growth in litigation in New Zealand between parents and children/step parents and step children.

Take the case of Steve who at the age of 42 lost his wife Mary to cancer. Three years later Steve formed a new relationship with Sue and after a period of time Sue moved into the family home. Steve had two children from his first marriage and Sue had one child who lived with them on a week about basis.

Sue had minimal assets but Steve's former wife Mary had left a large insurance policy which meant that Steve was able to freehold the family home. Steve and Mary regularly had discussions at the dinner table that they should go and see their lawyer to obtain advice and merge their assets including the family home which remained in Steve's sole name. However Steve and Sue led a busy lifestyle and for one reason and another they never really got around to going and seeing the lawyer.

Tragically at the age of 51 years Steve was killed as a result of a motor vehicle accident. After the funeral Sue decided that it might be a good idea that she went and saw a lawyer in order to sort any issues that needed to be sorted for Steve's Estate. Sue had never met Steve's lawyer but she telephoned him and made an appointment. It was then that she learned that Steve had never got around to signing a Will. Apparently a draft had been prepared 5 years earlier but Steve had never bothered to turn up and sign the Will. Never mind thought Sue everything would pass to her as Steve's partner. You can imagine Sue's demeanour when she learned that it was not as simple as that.

When someone dies intestate (i.e. without a Will) the estate is distributed in accordance

with the Provisions of the Administration Act 1969. The Act provides:

- The first \$155,000.00 of the deceased assets and personal chattels go to their partner;
- The balance then goes one third to the partner and two thirds to the children;
- If there are no children then the partner gets two thirds with the balance going to the partner's parents.

Steve's estate was worth 1.5 million. The family home was worth \$1 million and Steve had a number of cash investments/equities worth \$500,000.00. This meant:

- Sue received \$603,333.33;
- While Steve's children received \$896,666.67.

Alternatively Sue was advised by her solicitor she could make a claim under the Property Relationship Act 1976 for 50% of Steve's estate which was classified as relationship property. The cash investments of \$500,000.00 were acquired by Steve prior to him and Sue getting together so they were his separate property. All Sue was entitled to as a relationship property claim is 50% of the family home which would have meant she would only receive \$500,000.00.

Sue received an average income and was not in a position to take on a mortgage in order to pay out Steve's children from the estate. The consequence of course is that the family home had to be sold.

It is therefore imperative that you make a Will that sets out clearly your intentions as to the disposition of your property assets in eventuality of your death.

20 MINUTE FREE

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