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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

## The Importance of a Will

By Davina Rowan



It is always a good idea to have in place a Will setting out directions as to how you would like your assets dealt with after your death. This will provide peace of mind to both you and your family members so that your wishes will be carried out correctly. Furthermore, Wills can ensure that specific assets are given to the person you wish to have them, that donations are made to the correct charities, that loans are forgiven and that your body is disposed of in the manner you wish.

Without a Will your assets are dealt with by legislation in the following way:

- (a) If there is a surviving spouse/partner but no surviving children or parents, the Estate will pass to that surviving spouse/partner.
- (b) If there is a surviving spouse/partner and children, the first \$121,500.00 will pass to the spouse/partner and the remainder will be split between the surviving spouse/partner and children.
- (c) If there is a surviving spouse/partner and no children, but surviving parents, the first \$121,500.00 again will pass to the surviving spouse/partner and the remainder will be split between the surviving spouse/partner and the surviving parent(s).
- (d) If no spouse/partner survives but there are surviving children all the Estate will pass to the children.
- (e) If there is no surviving spouse/partner or child

but there are surviving parents, the Estate will pass to those parents.

- (f) If there is no spouse/partner, children or parents, the Estate will pass to any surviving brothers and sisters.
- (g) If there is no surviving spouse/partner, children, parents, brothers or sisters, the Estate will pass to any surviving maternal or paternal grandparents or maternal or paternal uncle and aunts.

### For Example

Cheryl used to be married to Wolf. During the marriage Cheryl and Wolf had four children. The children are now in their twenties. Cheryl and Wolf separated and divorced. Cheryl began a relationship with Judd and they have been living together for four years. Cheryl has adopted a child and has also had a baby with Judd.

Cheryl does not have a Will. Cheryl was involved in a fatal gas explosion.

Cheryl owns no major assets but she did own items that were particularly special to her being her engagement ring, her father's tool set, her father's encyclopaedia set, and her grandmother's mirror. She would have like one of each of these items to be passed to her four adult children.

All of her assets are valued at \$100,000.00. As they are below \$121,500.00, they all passed to

Judd. Her children received nothing.

If Cheryl had had a Will specifying that she wished those items to go to her children, her assets would have been used in this manner.

### The Importance of Updating your Will

Even if you have a Will in place it is a good idea to update it either every five years or each time a significant change is made in your life. Such significant changes can include the acquisition of major assets, the addition of children or grandchildren to your family, the creation of Trusts and Companies, the acquisition of overseas assets, the death of a party named in the Will, or the sale of a specific gift listed in a Will. If a Will is out of date your wishes may no longer apply or someone who you think is receiving something in a Will may no longer receive that gift or entitlement.

If you are recently separated, it is very important to make a new Will as soon as possible. If you don't, your assets will go to your former spouse or partner.

If you have recently married or entered into a civil union, any Will made prior to that civil union or marriage will be void (see Volume 10 of our newsletter available at [www.collinsmay.co.nz](http://www.collinsmay.co.nz) for an example.

### Example

Back to Cheryl. She had a Will prepared when she was married leaving everything to her three children who were alive at the time of her making that Will. In that Will, Cheryl specifically named the children. Her fourth adult child, adopted child and

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Newborn are now excluded from receiving any assets of the Estate under her Will, as is her partner Judd. The only way for Judd or the other children to receive anything will be through a claim in Court or at the discretion of the three receiving children.

**Other Matters to Remember**

If your assets are owned by a Trust, your Will does not apply to those assets. To ensure any assets are distributed or used according to your wishes, you must have a Memorandum of Wishes in place.

Even if you have a Will and it is up to date, it is important to remember that if you have a spouse or partner, that they are not limited by the terms of the Will in regards to any relationship property you may have together. A spouse/partner can choose to make a claim pursuant to the Property (Relationships) Act 1976, meaning all relationship property will be valued, divided in half, and your half of that division forms your estate.

Family members excluded from a Will can also make a claim pursuant to the Family Protection Act 1955, so it is important when drafting a Will that you advise your lawyer if you are excluding anyone.

If you have any queries in regards to creating a Will or you feel that your Will is potentially out of date, or that someone may try and contest your Will, please do not hesitate to contact us.

Next Issue: Power of Attorney—Rights and Obligations.