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blended families and wills

Today in Australia there is a rate of divorce at around 1 in 3. As a result, there are lots of second or more relationships which can result in a blended family with children from more than one relationship or step children.

Also common is resentment and unhappiness from children of a first marriage against a parent's new family.

If you can identify with one of these scenarios you will understand the complexities and issues that can arise.

When a couple divorce their will is altered in so far as a spouse appointed executor or any gift left to a spouse under a will is revoked. This usually means a new will is required.

Therefore, unless a divorced spouse prepares another will they will die intestate and the estate will be distributed according to the Succession Act.

If juggling with a blended family and all that entails, it is easy to overlook thinking about what would happen if you died.

We say to our clients that after any significant change in life you should revisit your will to ensure it still does what you want it to do and those closest to you are looked after.

If you are in a second relationship and your will does not provide anything for your spouse or de facto, that person may be entitled to a share of your estate if a number of factors can be satisfied under the NSW Succession Act.

Those entitled to make a claim (eligible persons) are:

- spouse of deceased at time of death;
- de facto at the time of death, this means a relationship as a couple living together and not related by family. All circumstances of the relationship are taken into account;
- child of deceased;
- former spouse of deceased;
- a person wholly or partly dependent on the deceased AND was a grandchild or a member of the deceased's household;
- a person who was living in a close personal relationship at the time of the deceased death.

A claim is made by issuing a Summons in the Supreme Court of NSW.

After your death and eligible person has 12 months to make a claim against your estate.

The only other way to resolve the issue would be if all parties agree to a change in the will. This is unlikely.

Your executors have to appoint lawyers to deal with the Supreme Court claim. The eligible person also has to appoint lawyers.

If the eligible person wins and receives part of your estate, the estate usually pays the eligible person's legal fees as well as the lawyers appointed by the executors.

It is an expensive and emotive process that ultimately depletes the value of your estate.

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It is therefore important to keep your will updated to reflect changes in your personal life to minimize potential claims against your estate.

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