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The Hidden Costs of Not Having a Will

Introduction

Sometimes people need an incentive to act and when it comes to getting a Will done, a large segment of the community fall into this category. If people were aware of not only the financial costs but the emotional costs caused by not having a Will they would certainly have that incentive. As an adviser we believe the following very common scenarios may help you convince clients to act sooner rather than later.

When someone dies without a Will their assets will be distributed according to a legislative formula. In our experience this formula has caused a lot of heartache to the deceased's family and in many cases is not what the deceased would have wished for. Importantly there are other consequences of not having a Will that suits a particular client's needs. Let's look at some scenarios.

Married with children?

Most people assume that if they die without a Will their estate automatically passes to their spouse. However in Victoria, if a spouse with children dies without a Will, their partner receives the first \$100,000 and only a third of the balance of the estate. The rest will be shared between the deceased's children, regardless of age.

But don't worry - if the family home forms part of the estate, there are provisions in the Act for the spouse to buy back the children's share of it at market value!

Married without children?

Tom and Linda were a young married couple without children who were both killed in a car accident. Under Victorian legislation the eldest of the couple was deemed to have died first which meant their assets were passed on to the younger spouse. However in this case as that person was also deceased the assets were then passed to the younger person's parents.

In this example Tom was older than Linda, so he was deemed to have died first. All assets were transferred to Linda, but as she had also died, the entire estate assets were passed on to Linda's parents. Leaving Tom's family with nothing.

Do you think your spouse is likely to re-marry if you die?

This is usually a key trigger for most people. John was concerned that if his wife Lisa remarried after his death, that his estate would be vulnerable. What if Lisa's new husband turned out to be a gambler and he had access to the inheritance via a joint bank account? If John died without a Comprehensive Will and testamentary trust Lisa could not easily keep the funds away from a new partner. And what about the children? If Lisa died, the new spouse could get the lot.

Single mum or dad?

Sarah and her only child Daniel were killed in a car accident. Sarah, being the oldest, was deemed to have died first so her estate assets passed on to Daniel and in turn to Daniel's father - Sarah's ex- husband.

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It is very important for Sarah to have a Will that states who the assets should go to in the event that something like this occurs. The Will needs to put a time limit on the distribution. For example, if my child dies within 30 days of me, the estate passes direct to my siblings.

Further to this example if Sarah died in the car accident and Daniel survived, he would receive the estate assets. As Daniel is a minor Sarah also needs to think about who will manage the estate assets. If she does not want her ex-spouse to manage it (which he probably would as guardian) she should think about establishing a Child Beneficiary Trust and appointing a trusted family member eg a sibling to act as a trustee to manage the assets.

De Facto relationship?

Robert has \$1m in assets and has been in a de-facto relationship with Jodie for 2 years. If Robert dies without a Will (and has no children) Jodie would inherit all of his estate. If he had children from a previous relationship Jodie would get the first \$100K and a 1/3 of the balance of the estate. Is that what he wants?

How responsible are your children?

Tony and Carla have a 18yo son Jason who has a drug problem. If they died without a Will he would have immediate access to their \$750,000 estate. To protect it (and him) they need a Will drawn up that allows Tony's brother to manage the estate and provide Jason with living expenses only as he needs them.

No contact with a parent?

John was a recent client who was concerned about his brother's estate as he had died without a Will. His brother Paul, who was in his 30's, had died unexpectedly. He was not married and had no children. Consequently according to state law, his estate was to pass equally to his mother and father.

This sounds fair except that their father had walked out of their lives when they were very young and not only had they never seen him again, he had provided no financial support.

You can only wonder whether that was what Paul would have wanted.

Super can cause the most angst!

Sandra's 70 yo father had recently re-married. When he died without a Will (and an estate valued at \$1.2m), his wife received the first \$100K plus a third of the balance. This meant she received \$100K plus \$366K.

However she was also granted the \$600K super by the fund trustee so received a total of \$1.066m. Maybe that's what he wanted however it's possible he thought his super was part of his estate and wanted it shared equally between the three beneficiaries. If George had a Comprehensive Will with an equalisation clause, his new wife could have received the super of \$600K and his children would each have received their \$600K share direct from the estate.

Contemplating marriage?

Joe and Anna were getting married shortly so thought they'd wait until after the wedding to get their Wills done. However they were going overseas for their honeymoon and were concerned that something could go wrong (like a lot of clients travelling overseas!). We drew up their Wills for them 'in contemplation of marriage' with the future spouse noted in each. That way their Wills stayed valid even though their marital status changed.

Estate executor and family trust

Geoff was executor of his parent's estate when he suffered a heart attack and his estate passed to his wife. Unfortunately that meant she then stepped in to control her parents-in-law estate. Geoff's siblings were not happy especially as she became appointor of the family trust. As a trust cannot form part of an estate she had complete control over all of the trust assets. If Geoff had a Will made that included passing the executor role to his brother, it would have avoided a lot of heartache.

Can Irongroup Lawyers help?

If you would like to give your clients some encouragement to get their Wills done, our new Client Insight "Why you need a Will" may help.

If you would like a copy please email us on info@irongroup.com.

Or for more information on Irongroup's fixed price estate planning solutions please call us on 03 8621 9000.