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When should you make or review your Will?

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Most adults should have a valid Will. During the course of a lifetime, they should regularly review the provisions of their Will. In this article, we look at the various stages of life (by age, situation and circumstances) in relation to requirements for their Will at that point in time.

This is not necessarily an exhaustive list but it covers some of the primary stages of life and what considerations you should give to your Will, at that time.

1. Single and 18 Plus

A person 18 years of age or older can make a Will. When single, the person may wish to leave their estate to their parents or siblings or even some personal items or collections to their best friends.

1. Young Adults with Spouse or Domestic Partner

Many Australians are unaware that marriage actually makes any prior Will invalid.

A young couple may have a house, a car and other assets. But they have to consider what they wish to do in the tragic circumstances of a double fatality. In the first instance, they may have left their entire estate to their partner. But if they die at the same time (for example, in an accident), their Wills should make provision for second-named beneficiaries.

1. Couples with Young Children

When young with children, it is critical to have a Will because, on death, the laws of intestacy (that is, dying without a Will) may present many problems.

The house and some assets are subject to intestacy rules where, with young children, money may be held by the Public Trustee who may make financial and other decisions on behalf of the children until they reach 18 years of age. Parents also need to consider who would act as guardians for any children under 18 years of age.

1. Asset Accumulation Phase

In mid-life as children get older, many couples accumulate assets. These are often held in family trusts and superannuation. These present complexities where detailed estate planning and control of assets need consideration and expert advice from a lawyer highly experienced in Wills and estate planning.

1. Separation and Divorce

Unfortunately, it is a fact of life that many couples separate and divorce. Apart from dividing assets through their family law property settlement negotiations, each person must prepare a new estate plan to dispose of their assets on death.

As we said earlier, many Australians are unaware that marriage actually makes any prior Will invalid. Depending on the state in which you reside, divorce can also make your prior Will invalid. In South Australia it does not make the Will invalid, however, it does invalidate any entitlements of the former spouse.

1. Partnering Again

A person who is divorced or whose spouse dies, frequently re-partners whether in marriage or with a domestic partner. This can lead to a “blended family” environment. People with a blended family need to receive detailed advice on the control and disposition of assets to ensure that their children of a prior relationship do not become disadvantaged.

1. Ageing Together

A simple Will usually appoints a spouse as an executor. In many cases, on the death of one of the couple, the other is no longer able to fulfil the role of executor. They may not have capacity or they simply may not feel they are able to, or do not wish to, undertake the duties.

There should be a review of the appointment of executors as you enter your older years, to ensure that if a surviving spouse is unable to act, there are substitute persons who can.

At Daenke Lawyers, we provide advice and assistance across the full range of estate planning, including your Will. We ask all the right questions to ensure that the necessary provisions are included in your Will to protect your interests and the interests of your intended beneficiaries.

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