

Estate planning e-newsletter

Should you make your own will?

Efficiency⁺ Fulfillment⁺ Integrity⁺ Teamwork

Many people think that will making is easy and buy a will kit or a form from a newsagent. Our experience is that this often results in a disaster as the recent judgment of the Supreme Court of Victoria in the late Peter Brock's estate exemplifies.

Peter Brock made 3 "wills". The first was in 1984 with his solicitor, the second in 2003 by using a will kit and the third was in 2006 (6 weeks before he died), also by using a will kit.

Peter Brock's "family" at the time of his death consisted of Julie Bamford (de facto wife of about 15 months), Bev Brock (de facto wife of about 18 years), son Robert Brock, daughter Alexandra Brock and Bev's son James Brock (who Peter treated as his own child).

The homemade wills of 2003 and 2006 were both deficient as to the formal requirements of a will. The court was asked to rectify those deficiencies and to determine which was Brock's last will.

The 2006 "will" made provision for the 3 Brock children and Julie. Unfortunately, the court found that it was not a valid will. It probably expressed at least some of Brock's wishes as to his estate at the time of his death.

The 2003 will complied with the legal requirements for rectification of the formal inadequacies and it was held to be his last will. Unfortunately, as a result of Brock's lack of legal knowledge the will failed to make any provision for the distribution of his estate and created an intestacy.

The legal effect of the intestacy created by the 2003 will is that his estate is to be divided equally between his 2 biological children. Accordingly, James Brock and Julie Bamford missed out on a share in his estate.

The undoubted anguish and expense of a court case like in the Brock estate can be avoided by incurring a small expense of having your estate planning and will prepared by a solicitor with the appropriate expertise.

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