

## Brockie's lasting legacy ...

Whether or not you loved Peter Brock (or even like motor racing), the events after his death have caught many people's attention – Holden drivers and the rest of us alike. Since Brockie's death, his family have been up to their necks in legal disputes over his estate.

Basically, Brockie's 'estate planning' was a textbook example of how *not* to leave things after your death. As his ex-wife, Bev told the Victorian Supreme Court, "[Brockie] expressed the view that as he would not be around after he died, he had nothing to worry about".

I think that he made this comment tongue in cheek. Most of us love our families and want to protect them, rather than leave them to the pain of the court system.

Peter Brock didn't leave a clear, unambiguous Will (as someone with a high-risk occupation is expected to do). He didn't even leave a Will. He left something far worse:

- A 2006 Will that was half-finished and unsigned;
- A 2003 'do-it-yourself' Will that was signed and witnessed – but with spaces left for his wife to fill in after his death; and
- A 1984 solicitor's Will that included his parents as beneficiaries.

This is bad enough. But the year before he died Peter dumped his 'wife' Bev – who he'd apparently never actually married – and went to live with his new "true" love, Julie. Julie now wants part of his estate. But she's only mentioned in the unfinished 2006 Will. You can't get a non-contentious Grant of Probate out of an unsigned Will.

The courts decided that Julie shouldn't get anything. This is outrageous from her point of view (and maybe yours). Even though the latest Will is unsigned, it clearly says that Julie should get the house they lived in together. From his kids point of view (and evidently, from that of the Courts) if Peter had really wanted Julie to have his assets he would have signed the Will.

"Who cares" some would sneer? Ultimately, only Peter's family and loved ones. For the rest of us it's all tomorrow's chip wrappers. But Brockie's situation makes us examine our own arrangements, bearing in mind these legal facts:

1. In most states, marriage automatically revokes a Will - but divorce doesn't. However, legislation in some states' has now switched this 'old' way of things around. That is, divorce revokes a Will but marriage doesn't. Either way, if you've married, divorced, remarried or changed toy-boys you probably need a new Will.
2. If you are in a *de facto* relationship for more than about 2 or 3 years the courts may deem you to be married anyway (That time frame may be shorter if you have a baby or buy a house together). Do you really want your boyfriend of 4 years to get everything after you die?
3. Wills generally don't 'lapse'. If you have an old Will out there from 1974 it's probably still valid. Even if you divorced your ex-wife in 1982 the gifts to her in that Will may still be enforceable.
4. Only certain people can challenge your Will, depending on which state you're in. Usually, the kids from your first marriage can't challenge your second husband's Will. Think about it.
5. Wills are "proved" (granted probate) in the Supreme Court. That means any challenges to a Will are conducted in the state Supreme Court. That means big, lawyer fees. (This is the only positive spin of this whole mess). The average cost to your estate of a challenge to your Will – successful or unsuccessful – is probably over \$250,000. Your estate generally pays the lot – so there is less risk for the aggrieved person that got nothing.

Most of us can explain our post-death wishes pretty easily – in the Will you say that the ex-husband gets half, the kids get half, the toyboy gets nothing, etc. Unfortunately, dead men tell no tales. Everyone else will lie about, forget or bugger up what you told them.

Your ex-husband (whom you hate intensely) will tell the Court that the day before you died you had reconciled your differences and that you wanted him to have everything. Your kids will probably back him up.

For good reason, the authorities can only rely on what your Will says. You should have a specialist Tax

Lawyers draft your Will if:

- You have children from separate partners
- You have been married more than once
- There is a likelihood that someone may challenge your Will
- You have recently separated
- You have a family trust
- You have assets including your home of \$1m – in which case you either get a 3 Generation Testamentary Trust in your Will or leave the tax man with more than he deserves

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