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LawTalk Blog



The new South Australian “Relationships Register” and potential serious ramifications to your Will

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Date: Tuesday August 15, 2017

Have you seen the recent news about South Australia’s new “[Relationships Register](#)”?

Personal relationships, like marriage and de facto partnerships, have always played a big role in drafting [Wills and estate planning](#). And that is how it should be! After all, the whole point of making a Will is to look after your loved ones when you are gone.

However, relationships and how they are defined are sometimes different at law compared to what the parties in the relationship believe.

For instance, two people in a de facto relationship often consider themselves “a couple” long before the law does; at least as far as estate planning is concerned.

For example, for all your estate planning the law requires that a couple live together for a continuous period of at least three years before they are deemed to be de facto spouses. In Family Law this time frame is different and this blog is related to estate planning law.

It’s very important to be aware of this three year period

If a Will is not made within those three years, then if one of the couple dies, the survivor will not automatically be able to obtain entitlement to their late partner’s estate.

At law, they have not been together long enough to qualify as a couple, even though they considered themselves to be one.

Is my Will valid for the rest of my life?

Another little known fact is that marriage automatically revokes pre-existing Wills; that is your Will becomes void once you marry.

"Another little known fact is that marriage automatically revokes pre-existing Wills"

A couple who have been together for some time, but have not yet married, and have made Wills leaving everything to one another will no longer have valid Wills if they then do get married.

What happens to my Will if I get divorced?

If a married couple who have Wills become divorced, those Wills are **not** automatically revoked or void but the Wills are read as though the divorced spouse no longer appears in them.

In other words, any gift to that spouse lapses and any appointments given to them in the Will (such as the role of executor) cease to be effective.

The new South Australian Relationships Register

There are changes afoot in respect of [relationships in South Australia](#), which may affect each of the above situations.

The *Relationships Register Act 2016* has introduced a system where two people in a relationship, whether same sex or not and irrespective of how long they have been together, can formally register the fact that they consider themselves to be a couple.

There are some restrictions around that, such as the fact that they cannot register if one of them is already married or a former relationship is still registered as active. Also, one of them at least needs to live in South Australia. For full details on the new Register, have a look at my colleagues' blog "Couples can now register their relationship in South Australia for the first time!".

The aim of the register is to remove the former hurdles to getting defacto relationships recognised. It also allows same sex couples to obtain some degree of formal recognition of their union but it's important to note that the Register does not recognise a same-sex relationship registration as a marriage.

What impact might the Relationships Register have on my estate planning?

It used to be the case that if one spouse died, the surviving spouse had to apply to the Court for a declaration of the existence of a de facto relationship. The Court in doing so would consider and take into account the length of the relationship, how and where the couple lived, their financial contributions and dependence on each other and a variety of other matters.

That is now no longer necessary – registration on the Relationships Register by the couple is all that it takes.

However, the *Relationships Register Act 2016* has also amended the *Wills Act 1936*.

It is now no longer the case that only marriage revokes a Will. A relationship registered under the *Relationships Register Act 2016* will also do so.

"That leads to some potentially serious and unfortunate outcomes."

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For example, a couple in a long term relationship who have Wills in place might now wish for "formalise" that relationship by registering as a couple on the Relationships Register.

Without warning or knowledge, their long standing Wills are automatically revoked under the *Wills Act 1936* and are now void.

Another potentially serious problem that arises from the Relationships Register is the fact that the existence of the relationship is no longer "tested" by the Court. It may be that a couple register their relationship and then separate but do not update the Relationships Register.

The presumption at law will then likely be that the relationship still exists and that the couple are spouses for the purpose of the Register and estate planning law. So your estate might not necessarily go to those you wish it to go to.

It may be the case – and indeed, it is likely going to be the case – that [superannuation](#) and insurance payouts will be made to spouses of deceased persons as listed in the Relationships Register, even if in actual fact that relationship no longer exists.

Similarly, couples who make valid Wills after having registered their relationship on the Relationships Register but then separate without updating the Register will continue to have their former partner validly appointed in those Wills and all gifts to that partner will continue to be effective.

This is because registering on the Relationships Register is similar to getting married and deregistering on the Relationships Register is similar to getting divorced.

The rights which you and your partner obtain under Wills and Estates law, and the presumptions which the law makes as to your entitlements, depends on and requires that the information on the Relationships Register is up to date and correct.

If you decide to register your relationship under this new option available in South Australia, in order to avoid potentially serious and unintended consequences of that registration, it is very important that you speak to a Wills and Estate specialist.

Please note, this Blog is posted in Adelaide, South Australia by Andersons Solicitors. It relates to South Australian legislation. Andersons Solicitors is a medium sized law firm servicing metropolitan Adelaide and regional South Australia across all areas of law for individuals and businesses.