

# Update your will after separating

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As circumstances change in life it is important to review, and if necessary, update your Will.

A 12-year relationship between a de facto couple ended when the woman died after a long illness.

Prior to their relationship, the deceased had been in another lengthy de facto relationship and following the separation from her former partner had entered into a separation and relationship property agreement, settling all property matters between them.

However, at that point the deceased did not update her will.

When the woman's de facto partner died, her will, which had been made 20 years ago, was still valid.

Because it had not been updated, it did not provide at all for her surviving de facto partner.

Instead, it gave the majority of the estate to her former partner, who she hadn't had contact with for over twelve years.

The surviving de facto partner was left nothing and needed to then make a claim under the Family Protection Act.

At the same time the deceased's children, from her earlier relationship, also made a claim as they had not been provided for in the Will either.

Under our law, as a beneficiary under the will the former partner did not need to justify his position.

He was named as a beneficiary and therefore was entitled to receive under the Will.

A court can only interfere with that entitlement to the extent necessary to remedy any breach of moral duty to other parties, such as the surviving de facto partner and children.

This meant that although the deceased woman probably never intended to provide for her former de facto partner, having been separated from him for more than 15 years, the out-of-date Will meant that he would benefit from the estate.

For the surviving de facto partner, the stress of dealing with the loss of a loved one was compounded by the need to make a claim against her estate.

In situations like these, where the estate is relatively modest, the cost of making claims can easily outweigh any potential gain.

Working towards a settlement agreement, often referred to as a Deed of Family Arrangement,



Sorting out a will can be stressful, but is necessary.

PHOTO: 123RF

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typically provides a better outcome for parties involved in a claim.

Obtaining expert advice early on is important in order to understand the options available to you.

Anyone who has been through, or is going through, a separation should obtain advice about updating their will or making a will if they don't have one.

Keeping your will up to date can avoid family members left

behind having to deal with the stress and expense of legal battles and will ensure your intentions for your estate are clearly set out.

#### YOUR QUESTIONS

If you have a legal inquiry you would like discussed in this column please email Alan on [alknowsley@raineycollins.co.nz](mailto:alknowsley@raineycollins.co.nz) or Colin courtesy of RAINEY COLLINS LAWYERS phone 0600 788 484 [www.raineycollins.co.nz](http://www.raineycollins.co.nz)