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## Tax and Estate Planning Law E-alert

### The Peter Brock case: yes I have a will – or do I?

After a significant portion of the Late Peter Brock's assets have been expended on legal proceedings, who will ultimately receive the remaining assets remains unresolved.

Peter Brock's legal affairs to some extent reflect the complicated nature of his life. For all Peter's brilliance and talent, when it came to distributing his estate, the legal instruments he had attempted to create provided no certainty.

Peter Brock had 3 Wills prepared – one in 1984 which was prepared by a solicitor and was validly executed. Peter made another Will in 2003 prepared from a Will kit. It was signed by Peter but not properly witnessed and contained no provisions distributing the estate. Peter told his partner Bev that he trusted her completely, and she could complete the remaining sections of the Will at the time of his death with whatever Bev considered fitting. A third Will was prepared in 2006, again from a Will kit, and was never signed.

In 2007 the Victorian Supreme Court had to decide which Will should operate. Did the 2003 Will, even though it was not properly signed, nevertheless revoke the 1984 Will? The Court held that it did and that the application for probate of the 1984 Will should be refused. The Court decided that the 2003 Will had effect to appoint executors and to revoke any previous Wills, but unfortunately the Will did not explain how the assets would be distributed. So the estate would be administered in accordance with the laws of intestacy.

And so, despite being conscious of the need to make and update his Will, in not seeking proper legal advice, Peter Brock's attempts to implement his intentions resulted in a debacle encompassing as it did the involvement of his family and other loved ones in very public Court proceedings at a time of grief, and the considerable dissipation of estate assets in determining the unfortunate dispute. And still the question of final distribution of the estate has not yet been addressed. It is anticipated that Peter's partner at the time of his death will be making a claim on the estate.

#### Benefits of making a Will

Imagine the benefits which would have flowed to all concerned if Peter had embarked upon a small amount of estate planning with the benefit of legal advice which would have achieved not only a greater degree of certainty in administration of his estate but also the added benefits of taxation savings and asset protection.

Through all the sensationalism, the Court decision serves as a reminder that a Will can be revoked in a number of ways other than by properly signing a new Will.

#### Wills are revoked by marriage

Had Peter formalised his union with his most recent partner, the outcome would have been quite different. Many people do not realise that Wills are revoked by marriage. Divorce can also affect the provisions of a Will. At these momentous times in our lives we are often focused on immediate events, and matters such as estate and succession planning are not at the forefront of our minds.

#### A lesson to us all

It is a lesson to us all that no matter how successful and talented we are, unless we invest time and money in obtaining proper advice to provide for our family's future, then our lifelong efforts to secure that future may fail, and our assets can be distributed in ways that we would never have intended. Surely this is the ultimate cost/benefit analysis.

Perhaps consideration should be given to heeding the advice contained in Bev Brock's comment: "I would hope people out there take care of their affairs and sign their Wills and get all the details done".

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