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Welcome to this edition of Legal Insight for 2015.

Married at First Sight – What's legal and what's not?

Recently, audiences have been stunned by Channel Nine's new dating program 'Married at First Sight'. The program is as simple as it sounds. The two individuals get married as they meet for the first time at the altar.

The program has caused quite a controversy as viewers question whether or not the marriages will stand the test of time. However, one important consideration which has often been forgotten by the viewers (and cleverly sidestepped by the producers) is whether or not the marriages are legal.

The *Marriage Act 1961* (Cth) governs the laws relating to marriage in Australia. Section 42 of the Act requires that an Intention to Marry Notice must be provided to the authorised marriage celebrant not less than 1 month prior to the date of the wedding.

The Intention to Marry Notice must include full details of the parties and must be signed by both in the presence of an authorised witness.

It therefore follows that parties who have not met prior to the wedding day would be unable to complete the form and thus marry. To get around this legal restraint, the TV show depicts a commitment ceremony with a potential legal marriage at a later date. If it does not work out then there is no need for a divorce.

Audiences watching the show could be easily fooled into thinking the marriages on the show are legal. Under Australian law, there is no such thing as 'married at first sight'.

Words to the Wise

"It's good to have money and the things money can buy, but it's good, too, to check up once in a while and make sure that you haven't lost the things that money can't buy."

George Horace Lorimer

Why do I need a Will?

Answers

1. A Will provides certainty. It appoints an Executor to administer your estate, in accordance with your wishes.
2. If you don't have a Will then an Administrator will be appointed who must distribute your estate in accordance with the strict rules of Intestacy. These rules may dictate that your estate is distributed to people you would not have chosen to receive it and the people whom you would like to benefit, may be left out.

It is important to have a Will carefully drafted by a Lawyer who can review all of the issues which may affect the distribution of your estate. These include issues such as superannuation, legal and moral obligations, business assets, directorships, family trusts and your valued personal possessions.

For further information, please contact:



Madelaine Pelsler



Did you know...

If you work in the city, our Melbourne office is ideally positioned to meet your legal needs. For a convenient lunch time appointment or consultation, give us a call.

If you would like to receive an electronic version of Legal Insight, please:

- send an email to office@hutchinsonlegal.com.au
- call Tristan Tottenham of our office on **9870 9870**
- write to us at PO Box 450, Ringwood 3134

The Daughters Who Got Nothing

Or What Happens When Super Binding Death Benefit Nominations Fail

What is the significance of “death benefit nominations” that superannuation funds ask you to fill out and sign? Have you been confused by the various “nominations”, “binding nominations” and other similar documents that you are presented with from time to time?

A recent Supreme Court of Queensland decision has highlighted the significance and effect of a technically invalid nomination.

In this case the deceased Mr Munro conducted his own self-managed superannuation fund (SMSF) with his wife and himself as trustees and members. After Mr Munro’s death, his wife’s daughter from a previous marriage (“the step-daughter”) replaced him as a trustee of the SMSF.

Mr Munro had signed a “Binding Death Benefit Nomination” for his SMSF death benefits. This nomination directed that his fund benefits were to be paid to the “Trustee of the Deceased Estate”. According to Mr Munro’s intentions in his Will, he specifically wanted to provide a *set amount* to his wife and then gift the bulk of the funds to his own daughters from his previous marriage. The step daughter missed out.

However, the SMSF trust deed stated that a binding nomination was only permitted when it specified that the benefit was to be paid to one or more nominated dependants or to the “legal personal representative” of the member.

The trustees of the SMSF, being Mr Munro’s second wife and the step-daughter, decided that because the nomination was to the “Trustee of Deceased Estate” and not to his “legal personal representative”, it failed to nominate an eligible beneficiary. They then decided they were able to distribute the super benefits to Mr Munro’s various dependants at their own discretion.

Mr Munro’s two daughters issued proceedings to prevent a distribution being made. Ultimately the Court held that a strict reading of the SMSF trust deed was

correct and that a death benefit may be paid only to a legal personal representative or a dependant. As such, the Court ruled that Mr Munro’s nomination was not a binding nomination for purposes of the SMSF trust deed or the relevant legislation.

The effect of the Court’s decision is that instead of Mr Munro’s superannuation proceeds being paid to his Estate and then distributed to his two daughters (subject to the gift to his wife), his wife and the step-daughter have full discretion to pay the proceeds to any of his dependants – of whom his wife was one. If Mrs Munro decided to become the recipient of the entire sum (which she is entitled to do), Mr Munro’s daughters will receive nothing, despite his clear intention to the contrary.



The implications for members of both SMSF’s and other superannuation funds are clear. Professional estate planning advice is absolutely critical to ensure that your assets are distributed to your loved ones, in the way that you want, especially in blended families.

To discuss your binding nominations and other estate planning arrangements, call Jason Lau or Madelaine Pelser on 9870 9870.

Your Lawyer News



After more than seven years as a workplace and litigation lawyer with Hutchinson Legal, Edmund Saw has taken up a new role with an associated practice, YourLawyer.

As Edmund manages a team primarily providing assistance to victims of crime, he seeks to develop and grow areas of practice which include Workcover, TAC and Compensation Orders. He will also continue to provide employment law advice and assistance in his new role. We wish him every success in all the challenges he will face in this new role.



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FastFACTS

118, 962

average number of marriages taking place per year in Australia

56%

of weddings each year in Australia take place on a Saturday

74%

of weddings in Australia each year are conducted by a civil celebrant

72%

of all marriages in Australia are first marriages

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