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Valentine's Day for de facto and same sex couples: Get a Will

Red roses and candlelit dinners may be the traditional way to celebrate Valentine's Day, but a more useful way to demonstrate deep commitment to your partner is to talk about an estate plan, says Equity Trustees National Manager – Estate Planning, Anna Hacker.

"An estate plan which clearly outlines how the one you love is to be looked after if something should happen to you, or defines who can make decisions about your medical care if needed, is useful in any relationship, but particularly important for those in de facto or same sex relationships," Ms Hacker said.

"A Will may not seem an obvious accompaniment to Valentine's Day but recent events have shown that it can be the best and most useful way to highlight the importance of a relationship and ensure a loved one is treated with respect and consideration.

"Last month's case of a British couple on their honeymoon in Australia, whose same-sex marriage was not recognised when one of them died in an accident, is a reminder to those in de facto and same-sex relationships that their partner may not be treated fairly if anything happens to them. There are differences between the states and territories, so it can get quite confusing.

"The sad fact is that, in some states, a person may not be considered next of kin, and not included on the death certificate or allowed to make medical decisions on behalf of their partner, because their relationship is de facto or same sex.

"This is true for same sex couples even if they have been legally married overseas.

"Until the day when Australia recognises same-sex marriages, the best way to protect your loved one is to have an up-to-date Will and estate plan that includes a Power of Attorney.

"This applies to all de facto relationships, regardless of gender. I have come across situations where family members have denied that a relationship between two people was, in fact, de facto and claimed that the two people were simply friends or housemates.

"This can lead to a situation where friends of the couple are asked to sign affidavits stating that they believe the couple were de facto, or the surviving member of the relationship being required to make public details about the relationship that are very private or personal.

"This can be very unpleasant and humiliating, and can be easily avoided by having an estate plan," Ms Hacker said.

She added that another consideration is naming a partner as executor in a Will.

"Usually the executor organises the funeral, so this is another way of ensuring that a de facto partner has a say in what happens and can help make sure your wishes are carried out."

The situation can be even more complicated if there are children in the relationship, particularly if one of the parents is not the child's legal guardian.

"Get the complicated arrangements out of the way and clearly defined in your estate planning process – and clear the way for your relationship to develop safe in the knowledge that you have made a commitment in writing, and it's legal. And have a Happy Valentine's Day," Ms Hacker concluded.

Equity Trustees Media Release



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