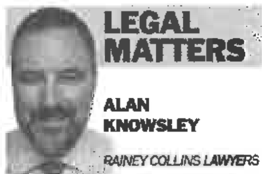
Marriage can make wills invalid



If you had a will made before you got married, it is probably no longer valid, unless it was made in contemplation of that marriage.

If partners entered into a civil union or were in a de facto relationship and made new wills at that time, their wills can become invalid if they later marry.

Marriage automatically (and unintentionally) cancels all existing wills, with unintended consequences for the couple. This also applies if you make a will while single and later get married or enter into a civil union.

If one of them dies, their will is invalid and their estate will be distributed in accordance with set criteria, rather than what was recorded in the will (that was signed before marriage).

That means the deceased person's wishes are not carried out and their spouse does not receive the inheritance intended.

If a civil union couple decides to get married this will have an impact on the couple's existing wills.

Also, if you are in a de facto relationship and are contemplating a civil union or marriage, this will affect your existing wills.

The law provides for several ways to cancel a will.

One is that if you get married or enter into a civil union. That will automatically cancel any will you have made. That would still apply if you have previously entered into a civil union and at a later stage, you decide to get married.

There are a few exceptions. The most common is if your will is made "in contemplation" of that particular marriage or civil union.

The best way to stop your will from being automatically cancelled if you were to marry or enter into a civil union is to include specific wording in your will stating that intention.

The message for couples who have recently entered into a civil union or marriage is to check that your will has not been revoked by your marriage.

If you are planning to get married or to enter into a civil union you should ensure your will clearly states that it is made "in contemplation" of that marriage or civil union, so your will does not get unintentionally cancelled.

If you die without a will, the law decides who gets your estate and the result is often different from what you would have chosen yourself.

In a recent case, a person died without a will, leaving his partner and his mother feuding over the distribution of property owned at his death.

Where one partner dies, the surviving partner has a choice as to whether they make an application under the Property (Relationships) Act or whether they take what they are given in the deceased's will.

In this particular case, the partner chose not to apply under the Act which meant (because they were not married and the deceased had no will) that property owned in joint names with the deceased passed to her by "survivorship".

The property owned by the deceased in his sole name passed to his estate and under our law was to be distributed to his parents.

Because most of the assets were owned jointly by the couple, the partner took most of the deceased's property.

Problems and disputes can be minimised by having an up-to-date will.

Another step you can take to reduce risk is entering a Contracting Out Agreement, which deals with how those issues will be handled.

■ Column courtesy of Rainey Collins Lawyers, phone 0800 733 484. If you have an inquiry, email aknowsley@raineycollins.co.nz.