Dixie Ann Middleton & ASSOCIATES

Family Law & Estate Administration

Emma L Turner
Principal

Dixie Ann Middleton
Consultant

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FAMILY LAWYERS
The Thynne Centre
4/18 Thynne Road
MORNINGSIDE Qld 4170

Phone: (07) 3395 5502
Fax: (07) 3399 1692
Email: mail@middletonlawyers.com.au
www.middletonlawyers.com.au

Firm News

Welcome to Spring! We have heard so many people say in recent days that they cannot believe it is September already and Christmas is just around the corner. We are all looking forward to warmer weather and longer days.

It was with great sadness that we said goodbye to Amara Boustead earlier this year. She is now pursuing a career with the Department of Child Safety, Youth and Women. Amara started working for us in 2010, just 3 days after she completed Grade 12. Back then, she was the office junior and worked her way through the ranks, while studying her Bachelor of Laws at Queensland University of Technology. It was a privilege for our Principal, Emma Turner, to move her admission as a solicitor in November 2016. We wish Amara every success in her new career.

It's not all bad news though! We were excited to receive the happy news in August that Amara and her partner, Samuel Matthews, are engaged and are now busily planning their wedding. Congratulations Amara and Samuel!

Find us on Facebook

Another Happy Client

We were delighted to receive some lovely flowers from one of our clients recently. She is now well on her way to a new chapter in her life. Here is what she had to say to us:

Morningside Festival

In late July 2018, we again joined in the fun of the Morningside Festival on Thynne Road, Morningside. This is a fabulous community event organised by the Morningside Development Association and supported by our local politicians, Kara Cook, Di Farmer and Terri Butler.

We always enjoy meeting our local community, sharing information with them and letting the kids have some fun too! Congratulations to our prize winners and thank you to those who came to visit us. The weather is always wonderful and we look forward to next year's event.

Don't forget that we also support the Carols in the Park (Joyce White Park, Morningside) to be held on Saturday, 8 December 2018.

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The Dangers of an Informal Will

The *Queensland Succession Act* ("the Act") requires formal requirements to be met when drafting a Will and executing it.

1. The Will must be in writing;

2. Signed by the Testator (the person making the Will);

3. In the presence of 2 witnesses who attest and sign the Will in the presence of the Testator.

However, the Court has discretion to dispense with these formal requirements in some circumstances. When considering whether to exercise their discretion to waive these requirements, the Court will consider the following factors:

1. Is there a document by the deceased person – pursuant to the *Acts' Interpretation Act 1954 (Queensland)* a document includes any disk, tape or other article or any material from which writings are capable of being produced or reproduced with or without the aid of another article or device. Thus data stored on an iPhone has satisfied the definition of documents see *re Yu [2013]QSC 322* and a DVD in the case of *Mellino v Wnuk [2013]QSC 336.*

2. Does the document fail to comply with the execution requirements in the Act?

3. Does the document purport to state the testamentary intentions of the deceased person? That is, how his/her assets will be disposed of after their death.

4. Is the Court satisfied that the deceased person intended the document to be that person's Will? ie not to operate during his/her life time.

Unwitnessed Handwritten Document Purporting to be a Will

Sadleir v Kahler & Ors [2018]QSC 67

Hannes Kahler died on 5 November 2016 at age 72 never having been married and without children. He left a handwritten document in the following terms:

MY WILL DATED 15TH JANUARY 1984

I, HANNES KAHLER, nominate as my sole beneficiary my brother, Mr Steffen Kaehler of 52 Walkleys Road, Valley View, Adelaide, provided that he is not separated or divorced from his wife, Frauke Edith, nee Broll, in which case my beneficiaries in equal shares shall be their children Maike, Anne and Tim Kaehler (3).

Townsville, the 15th of January 1984. H Kahler

He thereafter listed out his then assets.

At the time of Hannes' death his brother Steffen had died but had remained married to his wife at the time of his death. They had not separated or divorced prior to his death.

Hannes had lodged the document in the safe custody facilities of a Kingaroy firm of solicitors and it had been recorded as his Will at the time of his lodgement of the document with them.

The document did not comply with the formal requirements of section 10 of the Act.

The Court in construing this document was guided by a rule of construction which says that a Court should prefer a construction which avoids intestacy (that is someone dying without a Will). The Court also relied on a further rule of construction as his brother Steffen had predeceased him not having separated from or divorced his wife. The document stated that Steffen's children would take under the Will if their father was separated or divorced from his wife. It was, therefore, a contingent gift to the children. The general rule is that when there is a gift over upon a certain contingency, it will not take effect unless the exact contingency happens. There are however exceptions to that rule and the relevant exception is referred to as the rule in "*Jones v Westcomb".*

So applying that Rule the Court considered that the real contingency guarded against was that Steffen was not living with his wife at the time of Hannes' death. Steffen's 3 children received Hannes' estate.

While the Court was able to assist in the circumstances of this case, a professionally prepared and executed Will would have minimised delay and costs of administering this Estate. The cheap home-made Will can cause excessive costs so should be avoided.