



Supreme Court decision demonstrates the importance of regularly reviewing and updating your Will

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On 21 August 2024, the Supreme Court of Queensland delivered a decision in the matter of [Comino v Comino & Anor \[2024\] QSC 166](#). This decision involves a question of interpretation of the Will of 'Penelope Comino' (who this article will refer to as 'Mrs C') and highlights the importance of reviewing and updating your Will regularly, particularly where there has been a change in your circumstances.

Background to the matter

Mrs C owned a property ('the house') with her husband. Prior to July 2009, they owned the property as 'joint tenants', and from that date onwards, they owned the property as 'tenants in common'.

Mrs C had three children, Anthony, Maria and Arthur.

What is the difference between 'joint tenants' and 'tenants in common'?

Joint tenants

Where two people own a property as joint tenants they both, together as a pair, own 100% of the property. When one joint tenant passes away, then ownership of that 100% passes to the other joint tenant.

Tenants in common

When two people own a property as tenants in common, they each individually own a certain percentage of the property. When a tenant in common passes away, then their share of the property is dealt with as part of that person's estate. Their share of the property will pass to the beneficiary(s) nominated in their Will.

In this case, when Mrs C and her husband became tenants in common, they each owned a 50% share of the property.

Dealing with the property following her husband's death

Mrs C's husband updated his Will in contemplation of the change of the ownership structure of the property to become tenants in common. This updated Will stipulated that his share of the property (50%) was to pass to two of his children, Arthur and Maria. Following Mr C's death in 2013, this occurred.

At that time, the ownership of the property was Mrs C, Arthur and Maria as tenants in common with Mrs C owning 50% of the property and Arthur and Maria each owning 25% of the property.

Mrs C's Will had not been updated since 2000, when the property was owned jointly

In her Will, Mrs C also purported to bequeath her 50% share of the property to Arthur and Maria. However, unlike her husband, Mrs C's last Will was written in 2000 when the property was owned by her and her husband as joint tenants and did not contemplate the change of the ownership structure such that they became tenants in common.

In this Will, the 'residual' of her estate (everything other than the property), unlike the specific reference to the property, was to be shared equally between all three of her children.

Due to some complex wording in her Will, it was unclear whether the property could still be dealt with in accordance with the Will given there was a change to the ownership structure since the writing of the Will. That is, Mrs C did not, at the time of her death, own the whole property.

As a result of this lack of clarity, the court was requested to provide guidance as to whether the property should be dealt with as set out in the Will (written in 2000 when the property was jointly owned) or become part of the residuary of the estate, which would see all three children share the estate equally. Relevantly this ultimate question became whether the property would pass to Arthur and Maria only or to be split between all three of Mrs C's children.

The court's decision

The court, after considering the question, decided that the Will still sufficiently showed Mrs C's intentions in respect of the property and ordered that it be bequeathed to Arthur and Maria only, and not to Anthony.

Lessons for Will-makers; regularly review your Will and update as

required

Despite the many complex legal concepts in the matter, the lesson from this case simply boils down to a reminder to others to regularly review their Will and update it as necessary. Unfortunately, in Mrs C's situation, she lost capacity sometime after writing her Will, and therefore, she was unable to update it. However, for others who still have capacity, it is an important reminder.

This should be done particularly when there is a change to the ownership of significant assets, although this is not the only time that a review of your Will should be performed. For more information about some life situations when a Will should be reviewed to ensure it is still meeting your needs and is still reflective of your assets, please see our blog ["10 life events when you should consider updating your Will"](#).

Lack of clarity in the Will significantly increased the costs of administering the estate

In the case of Mrs C, the significant costs of a court hearing and all the necessary preceding events were a cost to her estate, which, in most cases, will ultimately result in reducing the amount that the beneficiaries are able to receive under their Will.

Most people draft their Will in the interest of reducing the impact of any unnecessary costs to their loved ones who are (usually) their beneficiaries. This case is a timely reminder that the Will you wrote many years ago (or, in some cases, only a few years ago) may no longer meet your wishes or intentions. It's a small price to pay to have your Will updated, compared to the potentially significant costs of court proceedings seeking clarification rulings and/or [challenges to the Will](#).

Get help from an estate planning lawyer

If it's been a while since you last updated your Will, or there has been a significant life event for you, then it might be time to have a chat with your lawyer to make sure that your Will is still fit for purpose.

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