

Why is estate planning important?



View Legal

An appropriate estate plan ensures wealth is dealt with, after death, as intended, while minimising the impact of challenges against the arrangements and costs such as stamp duty, tax and administration expenses.

WHAT IS A WILL?

A will is a document that enables you (the testator) to direct who is to receive assets from the estate and on what terms, after your death.

A will allows you to appoint who you want as the executor – that is the person who will administer the estate following your death.

If you have infant children, it is possible to nominate a guardian under the will to ensure that the family law court is informed of the people you determine are best placed to care for your children.



WILL



EXECUTOR



ASSETS



THE BENEFICIARIES

WHY DO I NEED A WILL?

A will is generally the most important document any person signs. After death the terms of a will can only be altered by a court and, unless a court intervenes, the will regulates how the deceased's assets are to be finally dealt with.

WHAT HAPPENS TO MY ASSETS IN THE ESTATE IF I DIE WITHOUT A WILL?

If you die without a will, the law says that your assets will be distributed to your family, as determined by a set Government formula, which is different in every Australian state.

To provide some general examples of the possible outcomes (bearing in mind the actual outcomes will be different in each state), if you die leaving:

1. your spouse, but no children: your spouse receives the entire estate;
2. your spouse and children: your spouse receives the first \$150,000 and one half of the balance of the estate (if there is one child), or one third of the balance (if there is more than one child);
3. children but no spouse: your children receive a share each, but only if 18 years of age or married;
4. no spouse or children: your parents will share the estate; and
5. no spouse or children and no parents: your siblings share the estate equally.

The amount received by each person will depend on the value of the estate and whether any other beneficiaries are entitled to your assets.

If you do not have any family members who qualify, then the assets may pass to the Government.

It is necessary that someone apply to the Court to be appointed as the administrator, to ensure that your estate is properly distributed. Failure to do so may result in additional time and costs to the administration of the estate.

If you have young children and a guardian is needed, an application to the Court may also have to be made to confirm who will act in this role.



IF I HAVE AN EXISTING WILL, DO I NEED TO CHANGE IT OR EXECUTE A NEW WILL?

You should review your will regularly to ensure it remains up to date with your current wishes. To ensure that this remains the case you should carefully consider the following questions (where applicable):

1. Who should be the executor of my will?
2. Who should be appointed to make financial, personal and medical decisions on my behalf if I lose the capacity to make these decisions myself?
3. If my first named executor or attorney is not able to act, who would I appoint?
4. Other than my immediate family, are there any other individuals or entities I would like to leave part of my estate to?
5. In the unfortunate circumstances that I and my immediate family die together, who should my estate pass to?
6. If my life partner and I both die together, who would look after my children? (i.e. who should be the guardian of your children)
7. Are there any specific wishes I would like noted?

Enduring power of attorney

An enduring power of attorney is where you appoint a person to make financial and legal decisions on your behalf while you are still alive, including if you have lost the capacity to make your own decisions.

In any estate planning exercise, an enduring power of attorney should always be used.

If no one is appointed as your enduring power of attorney, someone (for example, a spouse, child, trusted relative or friend) will need to apply to a court or a government tribunal to be appointed. It is likely that an officer from the government will also need to be involved in the management of your affairs which generally adds significant extra (and unnecessary) expense, both financially and emotionally.

DO YOU NEED TO REVIEW YOUR EXISTING POWER OF ATTORNEY?

It is important that you regularly review (and if necessary modify) your attorney nominations to ensure they are appropriate from time to time.

Some of the reasons that may mean you should revisit your existing arrangements in this regard include:

1. change in the matrimonial or life spouse arrangements of you or any attorney;
2. death or incapacity of an attorney;
3. moving of state;
4. children turning 18; and
5. change in the value of your assets.