

# Get advice on estate planning

An effective Will is central to the estate planning process and an important part of your overall personal financial strategy.

When considering estate planning, it is important to look at the purpose of a Will, the consequences of not having one and some of the main things to consider in the distribution of your wealth after your death.

Firstly, let's clarify the terminology. A Will is a legal document in which the person who has made the Will (known as the Testator or Testatrix) sets out who will receive his/her assets. In other words, it's just one vehicle through which your assets can be dealt with in the event of your death.

Another crucial term to understand is estate planning. This is the overall process of working out beforehand how your assets are to be distributed on your death. So, a Will is a document prepared as part of the estate planning process, which in turn should be part of your overall personal financial strategy.

A Will has three broad aims. It deals with how some types of wealth will be distributed after your death; it appoints the person or organisation charged with managing your estate (known as the Executor or Executrix); and helps ensure that your estate is distributed according to your wishes.

It is advisable to have a Will drafted by a qualified estate planning lawyer rather than taking the "do-it-yourself" option, particularly where there are more complex family and personal relationships involved. You can, however, buy a legal and binding "Will kit" for about \$15 from a newsagent or even download one from the Internet. These forms may be suitable if your circumstances are simple and straightforward, but be very careful. It's easy to make mistakes that can invalidate a Will, such as if the document is not witnessed correctly.

## So what happens if you don't make a Will?

Well, for a start you may cause additional anguish and financial stress for your family. Your "next of kin" may have to apply to a Court of Law for "Letters of Administration", which gives them the legal right to act as Administrator of your estate. If there is any uncertainty about who should be appointed as Administrator of the Estate, the Court may appoint an independent Administrator such as a State Trustee. However, the rules differ around Australia.

In essence, dying without a Will ("death intestacy") may subject your estate to certain legal rules that can be inflexible, so it's important to avoid this situation if you can. In some cultures it is not general practice to use a Will and, if this applies to you, it's worth reconsidering in light of the "death intestacy" laws.

## Starting your estate planning process

First, a Will may not cover everything. There are many different types of assets that you will accumulate in life that may not be included in a Will. Take superannuation benefits. Normally, it's up to the super fund's Trustee to decide where your benefits will go. Trustees are actually bound to distribute your benefits to your "dependents" or to your Executor/Administrator unless you have a "binding nomination" with the fund. In this case, your super entitlement will be paid to the party you nominate, which can be your Executor/Administrator.

Property owned jointly is another asset not usually dealt with by a Will – it comes down to whether you are a "joint tenant" or a "tenant in common". For example, if you owned the property with another person as "joint tenants" the other person will inherit the real estate on your death. A Will won't play a part here. If however, you are a "tenant in common" you can bequeath your part of the property by way of a Will as you see fit.

Other types of assets not subject to a Will are jointly held assets in bank accounts and life insurance policies.

Second, keep in mind the tax implications. When your assets are bequeathed, the beneficiary may inherit a tax liability. There are ways you can help ensure that your estate is distributed tax effectively, but seek the assistance of an appropriate taxation specialist.

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### When should you start the overall estate planning process?

As a guide, the best time is when you are beginning to accumulate assets. For some, this may coincide with major changes in life. It might be when you purchase your first home or start a family. Very often you will be consulting a qualified financial adviser at this time and it's a good idea to ask for a referral to a solicitor or firm that provides estate planning services. Wills should be reviewed regularly and amended as your personal circumstances change.

One last point to consider is a Power of Attorney. While not related to estate planning directly and not valid after your death, it does share a common aim of helping your immediate family or dependents. Briefly, there are a number

of different forms of Power of Attorney and rules differ from state to state. (For example, New South Wales has a medical power of attorney).

An "Enduring" power of attorney allows you to give someone control over your finances if you are incapacitated through injury or illness and no longer competent. A "General" power of attorney can be given to a person to enable them to arrange your finances if, for example, you are out of the country. You should consult your lawyer to determine what type of power of attorney is best for you.

Also, make sure you select a person you trust absolutely and someone who has the skills to administer your affairs, particularly if they are complex.