

irongroup lawyers



August 2008

Some common estate planning mistakes...

● Keeping an eye out for your clients

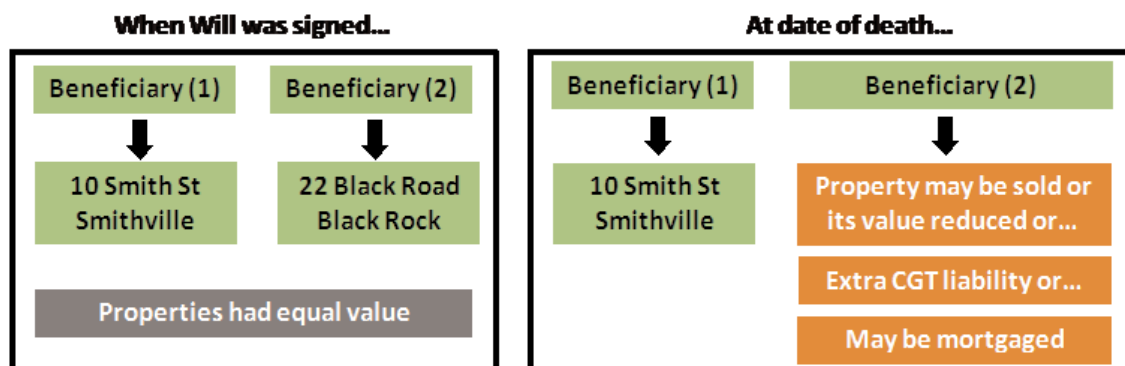
There are a range of issues within an estate plan that, if not checked, can cause problems for a Willmaker's beneficiaries. Some of them relate to the risk of having to review and update a Will while others can cause problems immediately. We have highlighted a few of them below so next time you review a client's Will you can ensure you check to see that these have been addressed.

1. Avoid nominating specific assets...

We usually advise clients not to nominate specific assets in a Will eg. leaving 10 Smith St, Smithville to one child and 22 Black Rd, Black Rock to another. Why? Unless the Willmaker is diligent about updating their Will, there are a number of associated problems including:

- the properties may or may not be owned by the Willmaker at the date of their death
- the value of the properties may have changed since the date the Will was drawn up and may no longer be comparable. For example, one suburb may have experienced far greater growth
- any capital gains tax liabilities attaching to the properties may have changed
- a mortgage may have been placed on a property, thereby reducing its net value.

Where possible, we recommend to clients that they leave the beneficiaries a share or proportion of the estate rather than particular assets. So for example, in this instance, the Willmaker could have left 50% of the estate to each child. The beneficiaries could still decide at the date of distribution to each take a property, which may or may not require some form of compensation from one to the other to ensure the distribution is equal in value.



The problems this can cause were highlighted in another scenario where we were approached by a client whose father had left her and her brother a block of land each in his Will, with the family home to be left to his second wife. He also had term deposits to be shared equally between the children and second wife.

When the daughter spoke to us, her father was still alive but was suffering from dementia and had been placed in a home. He had a Power of Attorney in place with his second wife as the Attorney.

The daughter was somewhat distressed because in order to pay for the father's care, the wife had sold the two blocks of land. The wife was within her rights to do so but it just so happened that, as a result, the children's inheritance was now greatly reduced. If the father had left the children and his wife say, a third each of his estate instead, they would have been in a far better position.

Some common mistakes...

This also applies to sentimental items. To avoid having to change the Will each time say, a piece of jewellery is bought or sold (or possibly lost), it is far better to nominate these in a separate gift list that can be easily updated.

Whilst the gift list can be noted in the Will, it is kept separate to the Will and can be changed by the client at any time. Once updated it should always be signed and witnessed by non-beneficiaries and kept in a safe place.

2. Don't assume ownership...

Part of identifying a client's estate planning needs is uncovering what person, persons or entity owns particular assets. Clients may need to check original contracts or titles for example, to see if property is owned as joint tenants or tenants in common. If a client wants to leave their share of an asset to someone other than the other joint owner, they will need to have the title changed. This also applies to joint bank accounts.

Similarly, we have reviewed Wills for clients only to discover they have not only nominated specific properties to be left to individual beneficiaries, but those properties were owned by the family trust and could not be distributed via the Will. The powers of appointment for the trust need to be addressed in the Will in order to hand over control of the trust. We recommend the client draw up a Statement of Wishes which, although not binding on the trustee, does provide guidance as to distribution of assets and income.

Life insurance is another item to check. In most cases, when it's held outside of superannuation, the policy should be self-owned so that the deceased estate deals with the proceeds especially if there are testamentary trusts in place, to take advantage of asset protection, tax benefits and control issues. The proceeds can still be directed to a particular beneficiary but can be placed in a trust they control.

3. Ensure the Executor has enough power..

It's important to ensure the executor not only has the power but the obligation, to take into account any payments any of the beneficiaries may have received as a result of the Willmaker's death. This assumes, of course, as is the case in most instances, that parents want their children to receive an equal inheritance.

For example if a younger child has received super death benefits but older, adult children have not, the executor should be able to adjust the distribution to each beneficiary from the estate to take that into account.

Treatment of loan accounts to or from family trusts may also require adjustment of distributions by the executor.

Irongroup's options for Advisers

1. Referrals: If you have clients who need estate planning advice, simply email their name and phone number to referrals@irongroup.com and we will contact them obligation free for an initial chat. Refer to www.irongroup.com for information on our fixed fees.

2. Estate Planning training: If you would like to increase your knowledge of estate planning to enable you to provide advice to your clients you should consider attending a full day estate planning workshop. We are also running lunchtime seminars for those who want an overview of estate planning. Go to www.irongroup.com and click on [Irongroup Training](#) for details.

3. Estate Planning System: For Advisers who want to offer an in-house estate planning service, Irongroup has an estate planning system available for licensing. This includes training, access to our restricted website for material including templates and worksheets as well as wholesale fees.

It also includes access to lawyers for assistance. Irongroup fulfils the legal requirements by preparing the legal documents based on your brief to us. If you would like to know more about this opportunity to extend your offering, go to www.irongroup.com and click on [Alliance Partner Model](#) for details.