

Why you need a Will

Choosing where your assets go

Introduction

Planning what will happen after we die is not something many people look forward to addressing. However it is important because not only will your loved ones have to deal with the grief of your "departure", they may be left to manage the conflict and angst that can arise when you don't leave a Will.

"Intestacy"

If you die without a Will you are deemed to have died intestate and your assets will be distributed according to a standard government prescribed formula. In our experience this has the potential to cause a lot of heart ache and may not be what the deceased would have wanted. Whilst these laws differ across states, we will look at some scenarios using the Victorian legislation that may help convince you to have your Will prepared!

Married with children?

Most people believe that if they die without a Will their estate automatically passes to their spouse. Think again... In Victoria, if a spouse with children dies without a Will, their partner receives the first \$100,000 and only a third of the balance of the estate. The rest will be shared between the deceased's children,



regardless of their age.

Here's an example - Sue's estate comprises a half share of the family home worth \$500K, an investment property worth \$400K and \$100K of shares. Her estate is worth \$1m.

What would happen if she died without a Will? Paul her husband, would only receive the first \$100K and 1/3 of the balance ie total \$400K. Her two children would receive \$300K each.

But don't worry - there are provisions in the Act for Paul to buy back the children's share at market value!

Separated but not divorced?

The formula mentioned above also applies if you are separated but not divorced. If you don't have a Will in place, and are not yet divorced, your husband or wife could end up with a significant part of your assets. If you have recently separated you should consider who you would want to receive your assets and have a Will prepared accordingly.

What if the person who died without a Will was in a de-facto relationship but he hadn't yet divorced his previous partner? Again, the above formula is applied. However depending on how long they have lived with their de-facto, the wife and the de-facto share in the first \$100,000 and the 1/3 share of the balance of the estate (again assume this is a Victorian example).

Let's say Jill and David had lived in a de-facto relationship for two years and David's total estate is worth \$1m. David is not yet divorced.

If David died without a Will and there were two children involved, the 'partner share' would be \$400,000. The children would share in the \$600,000 balance.

As David had been living with Jill for 2 years she would get a third of the 'partner share' (approx \$133K) and his ex-wife would get the other two thirds (\$266K).

The children's share would remain unchanged at \$300K each.

There is a sliding scale so that after 6 years together the de-facto receives 100% of the partner's share and the spouse nil. Similarly if the defacto relationship is less than 2 years old the spouse receives 100% of the 'partner's share' which is \$100K and a third of the balance of the estate.

Do you think your spouse is likely to re-marry if you die?

Let's say your husband or wife re-marries. Perhaps they will have more children with their new partner. How would you feel if your children missed out? Perhaps you would like to leave them something direct in your Will to avoid this scenario.

What if their new partner turns out to be a gambler? What if they had access to the inheritance which was put in a joint bank account? You can leave your estate to your partner via a testamentary trust that can help protect it from this scenario.

Estate executor & family trust

Geoff was executor of his parent's estate when he suffered a heart attack and his estate passed to his wife. Unfortunately that meant she stepped in to control her parents-in-law's estate. Geoff's siblings

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were not happy especially as she became appointor of the family trust. As a trust does not form part of an estate she had complete control over all trust assets.

If Geoff had a Will made that included passing the executor role to his brother, it would have avoided a lot of heartache.

● Married with young children?

Have you considered who will look after your children if you both die? Who will manage their inheritance until they come of age? You need to identify your preferred guardians and talk to them about these and other lifestyle issues regarding your children.

● Are your children responsible?

If both parents die in a car accident for example, the children could have access to their inheritance when they turn 18. Perhaps you would prefer that they were a little older before having access to all that capital.

Most people prefer their children to be at least 25 y.o. these days with a responsible person (e.g. an aunt or uncle) managing their finances until then. There are estate planning solutions to manage this request but if you die without a Will your children will have full access when they turn 18.

● Have you re-married? Do you have Super?

Perhaps you have older children from a prior relationship. Be aware that if you have Super it may automatically be left to your new spouse and your adult children may get none of it. Also be aware that a de facto may also be entitled to your super - not just a married spouse. Proper estate planning can ensure your assets are left to those you want to receive them.

● Single mum or dad?

Sarah is a single mum who has died in a car accident. Her son Daniel is going to be looked after by his father.

Daniel will inherit all of his Mum's estate

assets but as Daniel is a minor who will manage those assets? Sarah should think about establishing a special trust and appointing a trusted family member e.g. a sibling to act as a trustee to manage the assets until Daniel comes of age.

● No contact with a parent?

'John' was concerned about his brother's estate as he had died without a Will. His brother Paul, who was in his 30's, had died unexpectedly. He was not married and had no children. Consequently according to state law, his estate was to be left equally to his mother and father. This sounds fair except that their father had walked out of their lives when they were very young and not only had they never seen him again, he had provided no financial support over all those years. Is that what Paul would have wanted?

● Contemplating marriage?

Upon marriage, an existing Will becomes invalid. However you don't need to wait until you are married to have a Will done or to update it. To ensure the Will remains valid after marriage it needs to recognise it is made 'in contemplation of marriage', with the future spouse noted accordingly.

● Preparing for future off spring?

You also don't need to wait until you have children before you have your Will done. The Will can cater for this by referring to all children alive at the time of death or born after the Will maker's death. This also means you don't need to change your Will each time you have a child.

● Are none of these examples relevant to you?

One final check. If you answer yes to all of these statements, then you may not need a Will at the present time.

- You are single
- Have never been married
- Have no children
- You do not own any substantial assets
- You are happy with a government

prescribed formula.

Any "No's"? Talk to your Adviser or call Irongroup for an obligation free chat on **03 8621 9000**.

Of course having a Will in place is critical but it's also important to ensure you have the right one to suit your particular situation.

With our **depth of experience, fixed prices and focus on providing positive outcomes**, we would be pleased to help.