

WHY DO YOU NEED A WILL?

TOMORROW IS NOT A PROMISE!

None of us know what is around the corner. It doesn't matter how old we are, anything can happen to any one of us on any given day.

One of the most important things you can do for your family and loved ones is to have a Will. Losing you is hard enough, dealing with grief and a financial mess is not the way you want to be remembered. Your family will always be better off if you have a Will.

Make your legacy your life's work and achievements, not the mess you left behind in death.

HAVING A WILL MEANS YOU DECIDE:

- You decide how your assets (your estate) will be distributed
- You decide who will be the person/s you entrust administer your estate (the executor/s)
- You choose who will take care of your children
- You can change your mind at any time and amend your Will.

WHAT HAPPENS IF I DON'T HAVE A WILL?

Your Assets:

If you don't have a Will, the State decides who gets your property in accordance with a formula set down at law.

Don't automatically assume that your spouse will get everything if you die without a Will. If you die leaving a spouse and children, then your spouse will get your personal items, the first \$100,000.00 of your estate and then only 1/3 of the balance. Your child/children will get the other 2/3. This may result in your spouse being forced to sell the family home in order to pay your children their share.

Under the formula, your assets could end up in the hands of distant relatives even if that is not what you would have wanted.

Your children:

If you don't have a Will, the court may decide who looks after your children. This may not be a family member or friend that you would have chosen and it may mean that your children are uprooted from their friends, family and school when they are grieving and vulnerable.

Tax:

You pay enough tax during your lifetime, why have your family pay more than they have to as a result of your death? Having a Will means that you can structure your estate in the most tax effective manner possible.

Control:

If you don't have a Will, you have no say in who administers your estate. This may be someone you would never have chosen to hold and manage funds in trust for your minor children or grandchildren.

For example, if you don't have a Will and if you are divorced, your ex-wife or husband may end up controlling your assets for the benefit of your children.

WHEN SHOULD I REVISE MY WILL?

There are certain circumstances in which we strongly recommend that you re-do your Will:

- **Your Will was done before you got married.** A Will made before marriage is not valid after marriage unless it was made "in contemplation of marriage".
- **You have separated from your partner.** Separation does not affect your Will so you may end up leaving your estate to your former partner when you would prefer it go elsewhere.
- **Divorce.** Divorce removes the divorced spouse from your Will leaving the rest of your Will valid. However, it is still very important to review your Will at this time as your ex may also have been your executor and you may wish to make alternative appointments and changes.
- **Change in relationships.** It may be that you wish to change your executor or beneficiaries due to deaths or changes in relationships over time.

- **Change in financial position.** You may have inherited some money yourself and be in different financial circumstances than from when you first executed your Will. Alternatively, you may have started your own business or structured your finances differently. Also, you may have accumulated a large part of your wealth in superannuation or trust structures which are not estate assets and as such need to be dealt with separately.
- **It's been a long time since I looked at my Will.** Many things change over time! There may be new relevant case law, tax changes or better ways of structuring your estate than when your Will was first drafted.

If you have a Will but haven't looked at it for 5 or more years, then it's worth getting a lawyer to review it. We do not charge for this service.

WHO SHOULD I APPOINT AS MY EXECUTOR?

The role of the executor is to deal with your estate after your death. It can be an onerous responsibility, particularly where there are young children beneficiaries and/or where the estate is complex. Some of these responsibilities include:

- Attending to funeral arrangements
- Contacting and dealing with financial institutions and other organisations
- Ascertaining the deceased's assets
- Dealing with beneficiaries
- Consulting with a lawyer
- Obtaining a Grant of Probate
- Dealing with any estate disputes
- Finalising deceased's tax obligations
- Distributing assets to the beneficiaries
- Investing funds and managing assets on behalf of minor beneficiaries (or other beneficiaries where specified in the Will)
- Acting in the best interests of the beneficiaries at all times.

Can my executor also be a beneficiary under my Will? Yes, in many cases, a spouse or adult child/children are appointed as executor/s. They are often the best people to appoint as they have a good understanding of your financial circumstances and wishes.

Isn't my attorney also my executor? An attorney appointed under an Enduring Power of Attorney is not the same as the executor of your Will. An attorney's power only exists whilst you are alive. Upon your death, the power is automatically revoked. The executor of your

Will then takes over. You may appoint the same person/s to be your attorney as your executor but they are two separate roles and you must appoint them through different documents.

WHO SHOULD I LEAVE MY ESTATE TO?

The beauty of having a Will is that you get to decide how your assets will be divided. Having regard to the needs of your family, you may decide to leave everything to your spouse, to your children or to other family members. You may decide also to leave bequests to friends or charities. It's your decision!

You can also leave items of sentimental significance to the people you care about who you know will most appreciate them (such as family heirlooms, jewellery, sporting memorabilia, war medals and photographs).

It is important to bear in mind however, that a Will can be contested or challenged where insufficient or no provision has been made in the Will for a spouse, children or other people you had an obligation to provide for where they can show that you had a moral obligation to do so and they have a financial need. It is therefore very important that you obtain legal advice if you decide to leave a family member out of your Will.

If you do leave someone out of a Will, writing a note explaining your decision may help avoid family conflict on your death. It is not always about the money, it can be about feeling rejected and it can destroy relationships after you have gone. Tell your loved ones why you have made the decisions you have. They can't ask you once you've gone.

DO-IT-YOURSELF WILL KITS:

Sure, you may save yourself a few dollars in the short term but these "savings" are often lost ten-fold or more in legal fees and lost tax opportunities that can arise from incorrectly executed documents and limited knowledge and understanding of possible outcomes.

A multitude of errors can occur in preparing your own Will. Does the wording accurately reflect your intentions? Is the meaning clear? Is it executed correctly? Have you made adequate provision for dependents?

If you have an elderly parent, it is particularly important that they seek legal advice in executing a Will so as to ensure that there is no question of testamentary capacity or undue pressure.

There are so many reasons why you should get a **lawyer** to prepare your Will:

- Complete estate planning advice, including Enduring Powers of Attorney (see our brochure)
- Ensure all documents are legally compliant
- Your wishes are clearly expressed in the Will
- Reduces likelihood of challenges to Wills due to execution problems or claims of undue influence or testamentary capacity
- Some of your assets may exist in complex structures such as trusts or self-managed super funds – these need to be addressed as they do not fall under the umbrella of your Will
- Provide most tax effective treatment of your assets
- Provide advice on testamentary trusts (see our brochure)
- Advise whether a claim can be made against your estate and what to do about it
- Provide safe storage of your Will and other important documents so your executor knows where to locate them.

Do your Will when you are well. When you can make clear, rational and informed decisions. When you can consult with your family and have their support and understanding.

Don't leave it until it's too late or until you are sick or injured and under the stress and pressure of what life can throw your way. You will have enough on your plate at that time – you won't need the added pressure!

**Death and taxes – the two certainties in life!
It can happen to any of us at any time.
Do your Will for your family and then get on with living.**

We hope you have found this information useful.

If you have any questions at all or would like to make an appointment to meet with me to discuss your estate planning requirements, please contact me on 0417 531 924 or meagan@devoillaw.com.au

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