

INFORMATION BROCHURE -WILLS

WHY WE MUST HAVE A WILL?

Everyone needs estate planning, even if we expect to live another 40 years. Without it, a large portion of our estate could be needlessly lost to taxes, fees, administration expenses and Probate.

As we are concerned about what happens to our estate after we die it is worth a bit of planning ahead of time. The simple fact is that failure to prepare for death may mean that our assets are given to people we would not normally want to leave our assets to.

The transfer of assets on death is often called "Estate Planning". Australia, currently, has no direct form of inheritance tax (Probate Duty) and due to political considerations, may never have such a tax. However, that doesn't mean that taxes are not paid in the event of death. What it means is that tax-effective estate and succession planning is somewhat under-developed. A properly drafted Will is essential in any estate plan which is one component of financial planning.

A Will is the means by which our assets are directed to the people we have chosen to benefit – otherwise known as "beneficiaries".

WHAT HAPPENS IF I DIE INTESTATE?

When there is no Will or no valid Will, you are said to die "intestate". Your estate may not be divided according to your wishes because legislation sets out how your estate will be distributed.

If you die leaving a partner (including a spouse, or a de facto partner) and children, your partner will receive the first \$100,000, the personal chattels and one-third of the balance of your estate. Your children will receive the remaining two-thirds shared equally between them. Your partner will also have the option of buying your interest in your shared home at its value as at the date of your death.

If you do not have a partner and do not have children or other descendants, your estate will pass to your parents if they are alive and, if not, then to your brothers and sisters, nieces and nephews, grandparents and, in some cases, cousins.

Intestacy may lead to some or all of the following problems for those surviving you:

- Our next-of-kin, our spouse or parent, will usually be left to sort out our affairs. Such a process often incurs expensive legal and Court costs;
- There can be significant costs in both dollars and time in dealing with the responsibilities associated with the administration of our estate;

- Our assets must be distributed in a set order of distribution according to strict legal requirements which may be unintended and/or impractical;
- A significant portion of our assets could be locked up in trusts established for the benefit of children at the expense of our spouse having free access to deal with those assets absolutely;
- Substantially more tax may be paid on our estate and other assets thereby reducing benefits to beneficiaries.

WHY DO WE NEED TO REVIEW OUR ESTATE PLAN?

Our lives are constantly changing. For example:

- We start a business;
- We get married, or divorced;
- We start a family;
- We inherit assets;
- We buy or sell a home; ...the list goes on.

It is obvious then that estate planning is really lifetime planning and should be examined periodically to ensure that our current circumstances are always incorporated into our Wills.

ARE ALL OUR ASSETS “ESTATE” ASSETS?

No, not all assets that we may count as our assets are considered to be “Estate” assets capable of being distributed through our Will. Only assets which we own in our own individual name are considered to be “Estate” assets which are capable of being distributed through our Will.

Some examples of assets which are non-estate assets are listed below:

- Family Discretionary Trust;
- Assets owned in joint names;
- Family Run Company or Business; and
- Family Superannuation Funds.

Special attention needs to be paid to planning for distribution of non-estate assets by means other than through our Will.

Further, there are numerous tax exemptions and concessions that affect these types of non-estate structures. The main concessions are designed to defer tax on any gain that would otherwise result from death. However, there are numerous unintended tax liabilities that could arise and prior research and planning must be undertaken and the advice of tax experts must be sought.

Wills drafted without consideration of the tax consequences generally provide for a person's assets to be sold and the proceeds distributed to beneficiaries. Any tax payable on these distributions may significantly reduce the value of the estate, particularly where such assets have significant unrealised capital gains.

Any distribution of assets should also have regard to the relative after-tax provision of each beneficiary's entitlement.

CAN I PREPARE MY OWN WILL USING A DO-IT-YOURSELF KIT?

"Do-It-Yourself" Wills, or budget Wills, may be useful to prepare a draft for review by an expert, but must not be relied upon because although the process may appear cost effective and hassle-free, it has several serious shortcomings:

- The preparer of the Will may have limited understanding of the types of problems that may arise;
- The Will preparer may have limited understanding of the options that may be available to overcome any problems;
- The Will preparer may have limited understanding of the way in which a Testator's intentions must be worded to clearly express the Testator's intentions.

THE APPARENT SAVINGS IN "DO-IT-YOURSELF" WILLS, WILL PROBABLY BE LOST IN LEGAL FEES AND LOST TAX OPORTUNITIES WHICH ARE INCURRED BY YOUR FAMILY AFTER YOU ARE GONE.

Legal advisors are qualified and experienced in obtaining accurate and complete instructions and will also provide for the placement of our Wills in safe custody, usually at no charge. It is of no help if you make a Will which cannot be located by our representatives/executors.

When we die, an application must be made for a Grant of Probate which is the process used to determine the authenticity of our Will and to establish the authority of our named Executors to carry out our wishes as expressed in our Will.

Our estate plan should include, not only a valid up-to-date Will, but should also take into account the following matters:

- An enduring Power of Attorney to enable our affairs to be conducted by a trusted attorney in the event that we are unable to conduct our own affairs because of ill-health (for example).
- An authority for an agent to make medical decisions on our behalf if we are unable to make those decisions ourselves.

WHERE TO NOW?

Should you be interested in having a Will drawn, please call our office on 9692 6500 to make an appointment to discuss your estate planning requirements with one of our Lawyers.