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## Why you need a Will – what you need to know



**Stephens Lawyer's Senior Associate Claire Maddocks shares her knowledge on why you need a Will and the issues you need to be aware of.**

When we talk to people about their will, they often say:

- "I'm not old enough to need a will"
- "I don't have anything"
- "It all goes to my family".

However, if you're adult and have assets, then yes you need a will. Having assets, doesn't necessarily mean owning your own home. If you die and have assets exceeding \$15,000 in total, then a formal grant of administration from the High Court is required before they can be dealt with or bills paid.

While we might not like to think about what will happen to our belongs when we die, making a will ensures that your wishes will be carried out, including:

- Who you want to be in charge of dealing with your assets – i.e. 'executors & trustees'
- Who will receive or benefit from your assets – i.e. 'beneficiaries'
- Any specific instructions regarding organ donation, your funeral, and cremation or burial
- Any specific gifts of personal items or money that you would like to make?

Very specific rules apply to the administration of Estates. If you die without a will and are 'intestate' then the Administration Act states who can and cannot apply for administration and who is to benefit from your Estate. This may not be the people you intended to appoint or wished to benefit.

For example, if you are married and have children but are intestate (you don't have a will) when you die, the Administration Act 1969 says:

- Your spouse is 'first in line' to apply for administration of your estate;
- Your spouse is entitled to receive your personal chattels (i.e. anything that can be moved including vehicles, boats, aircraft, horses, equipment for them, furniture, household effects, clothing, jewellery and watches), a payment of \$155,000.00 (with interest – which accrues from date of death until time funds are actually paid out) and  $\frac{1}{3}$  of anything that remains after that;
- Your children receive the remaining  $\frac{2}{3}$  share of your assets after allowing for the above.

The Act also covers what happens if you are unmarried, have no surviving children or other descendants but have siblings or grandparents, or aunts and uncles surviving you. If you have no surviving family members at all, your assets pass to the State.

or

You may have a will but the named executors may have died before you, you named your spouse but have since formally dissolved your marriage, or perhaps the person named does not wish to apply and has renounced their right to deal with your estate. Back we go again to the Administration Act to see who is next in line to apply for administration.

The Act also specifies the people that you have a 'moral' obligation to provide for under your will. We will advise you further regarding these obligations if need be.

### **What do you need to do?**

Provide information to us including: assets and liabilities, your family position, who you want to appoint to handle your estate and who you wish to benefit on your death. A will can then be drafted for your consideration.

- Any jointly owned assets pass to the surviving owner.
- Any assets which belong to a family trust (even if you are a Trustee of the Trust) are dealt with in accordance with the terms of the Trust Deed, not your will.

*Note:*

- Getting married revokes any will you may have, unless you make in in contemplation of marrying that same person;
- Formal dissolution of marriage does not revoke your will, but your will is read as if that person had died before you so any entitlement they may have had lapses.

Don't just sign your will and forget about it. Your will needs to be reviewed from time to time to make sure that it continues to meet your wishes and family circumstances and is appropriate.

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