

Is it time to get your Will up to date?

We have a few months left before the busy Christmas and school holiday period is upon us, so now is the time to think about whether your financial plan needs to be reviewed in light of any changes to your circumstances this year, and if your Will is up to date and estate planning is in order.

One of the key aspects of estate planning is the preparation of a Will. A Will is a legal document which implements your wishes for the distribution of estate assets upon your death. A Will determines who will be in charge of the administration of your estate (the executor(s)) and provides instructions as to how the assets of your estate are to be distributed to your beneficiaries.

Wills can vary greatly in their degree of complexity and can be used to achieve a wide range of family and tax objectives. There is no set format for a Will but there are preferred ways for a drafter to write clauses into a Will to achieve a client's specific objectives.

It's usually more appropriate for a solicitor to draft a Will, rather than using a Will kit. A solicitor can consider both your legal requirements and your wishes are met when drafting the Will. A solicitor can also better understand your instructions and comprehensively provide for the future, taking into account your personal circumstances.

Whilst a Will is personal to the individual, most Wills include some common elements, these include:

- statement that the document is the last Will and testament of the individual
- revocation of previous Wills, codicils and other testamentary dispositions
- appointment of executor and trustee. An alternative executor and trustee may be nominated in the event the preferred person is unable to fulfil their obligations eg they predecease the person or do not have the mental capacity to administer the estate
- gifts
- payment of estate debts and expenses from protected (eg life insurance, superannuation and compensation) and non-protected sources
- instructions for the division of estate assets when a beneficiary has died. One common method is to pay the deceased beneficiary's share to other beneficiaries
- general and specific powers of the executors and trustees
- instructions for the management of the estate, such as selling and/or investing of estate assets.

A Will should be reviewed on a regular basis, particularly if there is a change in your circumstances or any of your intended beneficiaries. The following list of events may require a review of your Will:

- divorce or separation (the impact of this differs according to the State or jurisdiction)
- marriage (in most jurisdictions a Will is revoked when a person marries, unless the Will was made in contemplation of marriage and states this)
- birth of a child
- death of an executor (where only one was chosen)
- death of a beneficiary
- disposal of specific assets which were intended for certain beneficiaries
- financial planning recommendations are implemented, which may then have estate planning implications such as:

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- superannuation death benefit nomination
- ownership of life insurance policies
- business succession planning
- disposal or acquisition of assets
- changes in the beneficiary's situation eg beneficiary becomes insolvent or wishes to retain social security income support or has a change in their taxation status.

A well drafted Will helps to safeguard the assets you have acquired, and takes care of the people you want considered, once you have passed away. It gives you the peace of mind that there is a legal document in place that outlines your wishes which can be carried out with regard to cost, tax effectiveness and personal needs of family members. Wills which are inappropriately worded can lead to disputes among beneficiaries or even intestacy, which is not the legacy you want to leave behind!

If you would like to discuss Wills, or any other aspects of your financial plan, we would love to hear from you, so please give us a call.