

Intestacy - 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 government prescribed formula. In our experience this has the potential to cause a lot of heartache and may not be what the deceased would have wanted. Whilst these laws differ across states, we will look at some scenarios 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. Actually, it depends what state you live in. In Victoria, New South Wales, and Tasmania, your spouse will inherit everything, unless you have children from a prior relationship. Then it will be shared. In the other states, the spouse



will receive a prescribed sum of money and the rest will be shared with the deceased's children, regardless of their age. That probably won't suit most people.

Separated but not divorced?

If you don't have a Will in place, and are not yet divorced, under intestacy laws, 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 they hadn't yet divorced his/her previous partner? Then the spouses might end up sharing a portion of the estate.

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

What if 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 the new partner is a gambler and has access to the inheritance via a joint bank account? You can leave your estate to your partner in 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 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 appointor role of the family trust 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 that capital.

Most people prefer their children to be at least 25, 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 get control at 18.

Have you re-married? Do you have superannuation?

Perhaps you have older children from a prior relationship. Be aware that if you have superannuation it may

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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 superannuation - not just a married spouse. Proper estate planning can ensure your assets are left to the individuals of your choosing.

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., one of her siblings, 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 children?

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 Willmaker'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. You may think that because you are not in a relationship

and do not have children, or significant assets, that you do not need a Will. However, sometimes there might be a significant asset in your estate if, for example, you have superannuation with life insurance attached or if you suddenly come into some money (perhaps an inheritance from another family member).

Rather than have the government apply a prescribed formula, you may prefer to choose who receives your assets and may choose to share them for example, between your parents and your siblings or friends and charities.

Summary

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.

Contact us

Please call us for an obligation free chat on **03 8621 9000** or send us an email info@irongrouplawyers.com.