Important Information About Wills

Everyone who has assets and/or children should have a Will.

If you die without a Will, known as dying intestate, then your assets will be dealt with by the Succession Act 1981 (QLD) and someone may have to apply for Letters of Administration to be able to execute your Will.

Anyone over the age of 18 who is of sound mind, memory and understanding can make a Will. The decisions you make in your Will must be made of your free choice and without pressure being exerted by anyone.

A Will is just another way of taking care of the ones you love.

What can I leave in my Will?

It is important to understand what types of assets may be included in your Will.

In the Will	Outside the Will
Assets you own yourself	Jointly owned assets
Life insurance owned by you with no beneficiary	Life insurance (with another owner or beneficiary) Includes insurance owned by Super
Super – where forced into the Will by a Binding Death Benefit Nomination	Superannuation – if no nomination, or nomination directing away from the Will
Shares in a private Company owned by you	Private Company assets
Appointor role in a Family Trust	Family Trust assets

What type of Will should I have?

There are two main types of Will:

'I Love You' Will

Often called an 'I Love you' Will, this is a Will where couples generally leave assets to each other and then to children. They are simple and cheap to implement and usually suit a straightforward family situation or where asset values are lower. This type of Will does not provide asset protection or tax effectiveness.

Testamentary Trust Will

A Testamentary Trust is a discretionary trust that can only be established by a Will. Testamentary Trusts offer enhanced security for the assets of your estate that is not available if they are simply distributed to your chosen beneficiaries.

The Will can specify the following in relation to the Testamentary Trust:

- The assets of the estate that are to be held in the Trust.
- The beneficiaries of the Trust – You can tailor this to suit your needs; for instance, beneficiaries can be:
  - bloodline only
  - non-bloodline
  - related trusts and companies.
- The Trustees of the Trust – can be one or more individuals or a company.
- The terms of the Trust in relation to access to income and capital. For example, you may wish to specify that immature beneficiaries cannot access capital until a certain age.

Testamentary Trusts are useful where:

- The beneficiaries have potential liability issues (where there is a possibility that they are bankrupt or may become bankrupt). If the beneficiary is engaged in an occupation which carries significant risk of litigation or owns a business, a Testamentary Trust can protect against creditors accessing the assets of the estate as they will not have direct ownership of these.

- The beneficiaries have an uncertain marriage. Testamentary Trusts may provide some protection for adult children in a matrimonial property settlement. This means that the Family Court may disregard these assets when determining the property settlement.
- The beneficiaries (surviving spouse or adult children) have children under 18 years of age.
- The intention is to protect assets for children but still provide for the surviving spouse.
- There are a significant amount of assets in the estate.
- You wish to provide discretion for the distribution of income amongst the beneficiaries.
- There are additional taxation advantages for beneficiaries under 18 years of age as they are treated as an adult for tax purposes. This means that all beneficiaries are able to access the $18,200 tax free threshold (this is generally not available to minors).

Disadvantages include:

- If you are using multiple trustees, they may not agree on future decisions.
- Testamentary Trusts normally have the same life span as a Family Trust. This means that within Queensland where a Testamentary Trust is established, it will have a vesting period of 80 years. After 80 years a new Trust will need to be created and this will cause both Stamp Duty and Capital Gains Tax issues.
- The Testamentary Trust will make your Wills more complex than a standard Will and therefore may cause higher fees to implement and to execute.

Contact us

If you would like to further discuss your Will, please feel free to contact one of our Wealth Managers to arrange a time.

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