

# Estate Planning

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Acorn Lawyers Monthly Estate Planning Update



#### Sydney Office

Suite 3, Level 7, 99 York Street, Sydney NSW 2000  
Tel. 02 9002 6060 | Fax. 02 9002 6061

#### Wollongong Office

15 Victoria Street, Wollongong NSW 2500  
Tel. 02 4226 5711 | Fax. 02 4226 5755

#### Nowra Office

45 Bridge Road, Nowra NSW 2541  
Tel. 02 4226 5711 | Fax. 02 4226 5755

#### All Mail To

PO Box 5488 Wollongong NSW 2520

Email [info@acornlawyers.com.au](mailto:info@acornlawyers.com.au)

Web [www.acornlawyers.com.au](http://www.acornlawyers.com.au)

#### Breakfast Seminar

Acorn Lawyers 2016 Estate Planning Breakfast Seminar will be held on Thursday, 26 May at the Wollongong Golf Club.

CPD accreditation will be available for financial planners & self-assessment for accountants.

Mr Michael Kloeckner of Clime Asset Management will give a guest speech on the current economic outlook post budget. Estate Planning topics include good estate planning and issues with blended families.

Please RSVP by return email.



## Leaving it too late – Why you need your Will, EPOA and AOEG today and not tomorrow

### Leaving it too late

We hear the excuses all the time. Too often, estate planning is left until it is too late. In this edition, we debunk common myths and look at why estate planning is more than a Will.

### When do I need a Will?

Sadly, death is a natural part of life. My aunt once said to me, 'Lindsay, life is like a jetty. Your father and I are slowly creeping towards the end, but just remember, some people fall off sideways.' We never know when our time may be up. Contrary to a wide array of myths, the vast majority of people over 18 years of age should have a Will.

But I am only a poor student, I don't have any assets. Well, not yet. You may unexpectedly inherit substantial wealth. It is never too early to have a Will in place, just in case.

I don't need a Will, my wife owns most of our assets and the rest are jointly owned so they will automatically pass to the survivor. Well, what happens when your wife dies? In the normal course, those assets will be left to you. You will need a Will to deal with those assets on your subsequent death.

So, can't I do a Will later then if I need to? Of course, but when we inherit significant sums or our wealth starts to grow, does anyone first think, 'wait, now I need a Will'. All too often it is left to late. Many of us never get to it.

### NSW Trustee and Guardian Wills

So I need a Will. I hear that the NSW Trustee and Guardian does them for free. By the time we become adults, we should know that very few things come for free! There is a catch. The NSW Trustee and Guardian is appointed to administer the estate and their fees are not cheap. Your beneficiaries will lose out. Take a look: <http://www.tag.nsw.gov.au/executor-fees-and-charges.html>

### Cost of Not Having a Will

What happens if I do not have a Will? You die intestate. The *Succession Act 2006* provides a statutory scheme of intestacy distribution, which means your estate may not pass in accordance with your wishes. Small families must be warned, if you leave no immediate family, then the default recipient of your hard earned wealth may be the NSW Government.

There are also additional costs in administering an intestate estate. Searches must be made, Affidavits filed and documents produced. The added legal costs are often in the thousands, far exceeding the legal costs for preparing a Will.

### Enduring Powers of Attorney

Why do we need to have Enduring Powers of Attorney (EPOA)? Isn't that what I need to look after mum and dad's affairs now that they are too old to do it themselves? Surely, I don't need that yet. Sadly, we never know when we will need this assistance. Did you know that in NSW some 15,000 people under age 30 have dementia? An accident can occur at any time leaving a person in a vegetative state or a coma. Once a person is over age 18, only a duly appointed Attorney can act for them. If no Attorney exists, an application must be made the NCAT (Guardianship Tribunal) or the NSW Supreme Court for a manager.

An Attorney is not just for worst case scenarios. If you're on a well-earned holiday, your Attorney can attend to pressing business at home.

### Alternate EPOAs

A wife appointing her husband as Attorney (and vice versa) is not enough. You should have a second or alternate Attorney. Jill appointed her husband Jack as her Attorney. Jack is 20 years younger and very fit. Jill has dementia and is in respite awaiting a bed in aged care. A bed is now available, but Jack passed away unexpectedly. Of course, Jill does not have capacity to sign the residency agreement. Without an Attorney, Jill's family must apply to NCAT to appoint a financial manager. Jill's son contests the appointment of Jill's daughter as manager. After six months of fighting, Jill passes away in a respite bed.

### Appointment of Enduring Guardian

We often hear, can't my spouse make health and medical decisions. In short, yes they can under the *Guardianship Act 1987*, but on the death of the first spouse, who will make decisions? Did you know that a person who has care of another (as defined under the Act) has priority in making a decision over a relative? Did you know there is no distinction between close friend and relative? There is a wide range of people who may decide your treatment. Hence the need for a trusted Guardian with priority over all others. Again, we never know when a Guardian might be needed.

- Lindsay Stoddart, Director