

Estate Planning

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Acorn Lawyers Monthly Estate Planning Update



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Wills on Wheels

Have you heard of our new Wills on Wheels services? We appreciate how difficult it is in retirement living or aged care facilities to make the journey into the CBD. We will arrange for one of our lawyers to come and see you in the comfort of your own home with no additional travel costs.

We also offer a significant reduction in our standard costs and a fixed-fee will be disclosed upfront.

Contact us on (02) 4226 5711 to learn more or arrange an appointment with the 'Wills on Wheels' team.



Intestacy – the dangers of not having a valid and adequate Will

Intestacy

Intestacy occurs where a person dies without leaving a valid Will. As there is no Executor, no one has been appointed to administer the estate. An application to the Supreme Court is required to obtain Letters of Administration, which authorises a person (usually the major beneficiaries) to administer the Estate.

There are additional legal costs payable for obtaining Letters of Administration. There are also additional searches required and other ancillary matters that increase administration costs of the estate.

Where does your Estate go?

Don't you want to control where your estate passes? Without a valid Will, the *Succession Act 2006* (NSW) provides a statutory order of distribution. Consider this basic summary:

1. if you and your spouse have no children, it passes to the spouse;
2. if your children are also children of your spouse, it passes to your spouse;
3. if your children are not also the children of your spouse, the estate is divided by a statutory formula between them;
4. if you have children and no spouse, it passes to your children;
5. if you have no children and no spouse, it passes to your parents and then down the family tree;
6. if you leave no relatives, the Government takes your estate.

Clearly, issues arise very quickly in blended families with the division of assets between children of a prior marriage and a spouse.

Multiple Spouses

After 20 good years, Fred separated from his high school sweetheart, Sara. Fred and Sara never divorced and did not make a property settlement. Shortly after, he moved in with Daisy. Fred and Daisy spent 5 happy years together, before Fred was struck down by a sudden heart attack. Fred did not leave a Will and he had no children.

A spouse is someone married to the intestate immediately, or living in domestic partnership with the intestate, immediately before their death. So who is Fred's spouse? That's right both Daisy and Sara. Accordingly, they each receive a share of the estate under the intestacy provisions. Strange scenarios arise.

Are your parents equal?

Jon, Jane and their two children were flying to Disneyland when their plane ran out of fuel and crashed. There were no survivors. Jon and Jane had significant assets in excess of \$3 million and neither had a Will. As there were no other spouses or children, their estates pass under the intestacy provisions to their parents. But to which parents do they pass?

Under the *Conveyancing Act 1919* (NSW), where two or more persons die in circumstances where it is uncertain which of them died first, there is a presumption that the older died first. Jon was 35 and Jane was 34. Accordingly, the law presumes that Jon died first. Jon's estate therefore passes to Jane first and the combined estate passes to Jane's parents. Jon's parents receive nothing!

In these circumstances, most clients will want the estate to pass equally (or in some other share) to each side of the family. Both Jon and Jane have contributed to their wealth and would want each of their families to benefit.

Who will care for the children?

Some years ago, I acted in a rather tragic estate. Jose and Betty were driving interstate for their first holiday alone together since the children had been born when they were tragically killed in a collision with a drunk driver. Jose and Betty had left the children with Jose's brother, who had not minded them before.

Jose and Betty did not leave Wills, however the distribution of their rather small estates was not the main issue. Who was going to look after the children? Jose's family claimed custody as they were currently looking after the children, but the children had spent much more time with Betty's parents who also wanted custody. Both families were involved in extensive and costly litigation over who would have guardianship.

Even in many Wills I review for those with young children, the often glaring omission from the Will is the guardianship clause appointing a guardian for children in the event both parents pass away. This is one, if not the most important, clause that should be included.

If your clients with young children already have a Will, please always ensure they have appointed a testamentary guardian in the event of tragedy!

- Lindsay Stoddart, Director