

# 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.



## Basics of a Quality Will - What clauses should you look for in a Will

### Comprehensive Will

Did you know that there are different types of Wills for different circumstances? That is why we never talk about simply making a Will. I am not just talking about Testamentary Trust Wills either. At Acorn Lawyers, we prepare a Comprehensive Will, with many features not found in ordinary Wills.

### Testamentary Guardian

If you have children under the age of 18, the most important estate planning question to consider is who will look after the children in the event of tragedy? I frequently review Wills that do not appoint a testamentary guardian for children. Parents with minor children must appoint a testamentary guardian under their Will. This is often the most critical provision in their Will at this age!

Sadly, I have previously acted in a disputed estate where a testamentary guardian was not appointed (I didn't prepare the Will). The result was disastrous.

John and Jen were heading to Brisbane for a family function. Normally, they would leave their 16 month old son Paul in the care of Jen's parents, however they were busy this weekend. Instead, they left Paul with John's parents (for the first time).

Sadly, a few hours after leaving Wollongong, a truck drove up the back of John and Jen's car and they were both killed. Their Wills did not appoint a guardian. Jen's parent thought it appropriate that they raised Paul, as they had a closer relationship and had cared for him in the past. However, John's parents thought they should raise Paul and would not let him go. After lengthy negotiations failed, the dispute was referred to the Family Court for hearing.

### Tragedy Clause

You only have to open the Illawarra Mercury to read another sad story of a young family wiped out in tragedy. Life is precious and the unexpected happens too often.

Small families in particular, should consider a tragedy clause. In the event that the family is wiped out (wife, husband and children), the tragedy clause provides where the estate will pass. Often a family will split the estate into two equal parts with one part to the wife's family and one part to the husband's family.

Without a tragedy clause, the estate would pass according to intestacy provisions under

the *Succession Act 2006* (NSW). This could lead to very unintended consequences.

Tim, Tess and their children were flying to Hawaii when their plane crashed and they all died. Their Wills left the estate to each other and then the children. There was no tragedy clause.

We don't know who actually died first. Where it is impossible to determine who died first, the *Conveyancing Act 1919* (NSW) presumes the oldest dies first. As Tim was older than Tess, he is presumed to have died first.

The main asset was the jointly owned home. As Tim is presumed to die first, the home firstly passes by survivorship to Tess. With Tess now dead, the home would pass to Tess's parents or (if they have both died) her brothers and sisters. That's right, nothing passes to Tim's family!

Ensure that your dreams, hopes and aspirations for loved ones are properly documented!

### Trusted Advisor Nomination

The best estate plans are made in consultation with the client's trusted financial planner and accountant. However, even the best estate plans can fail if they are not properly implemented.

On instructions, we include a strong wish that the Executors consult with and consider the advice of a client's financial planner and/or accountant. The advisor will often know the client's particular circumstances and can ensure that investments and other assets are properly accounted for.

### Executor Powers

Executors are given certain powers under the *Probate and Administration Act 1898* (NSW) to administer an estate. Some additional powers in our Will, among others, includes:

1. *Digital Self*: power to close Twitter, LinkedIn, Facebook and other online accounts that can be notoriously difficult to deal with;
2. *Minor*: advance funds to minor beneficiaries' guardian to provide for education and health (the power under the Act is very limited).
3. *Disability Trust*: establish a special disability trust compliant with Centrelink; and
4. *Business*: to continue operating a business.

Keep in mind that the old two page Will may not have sufficient powers to protect your clients.

Lindsay Stoddart, Consultant