
WILLS



Level 3, 104 Frome Street
ADELAIDE SA 5000
Tel: (08) 8415 5000
Fax (08) 8415 5099

INTRODUCTION

Many people consider that making a will is only necessary when you get to the “twilight years”. However, none of us know what fate has in store for us and without a will, you may be causing those you care about unnecessary stress, delay and expense. Making a will is easy, affordable and not as traumatic as you may think.

WHY SHOULD I MAKE A WILL?

- To make sure the people you want to benefit will do so. If you have no will, the law decides who benefits.
- To choose who is to be the executor(s) and in control of making decisions. These people may also be the trustees of money for children.
- To make specific gifts.
- To ensure a straightforward process of handling your affairs.
- To name guardians of children.
- To give flexibility to the executor in the way your estate is administered.

WHAT ABOUT SUPERANNUATION?

You may not realise that money invested in some superannuation funds is not yours to control if you die. The trustees of the Fund usually have some discretion as to where to pay the money under the terms of the Deed setting up the scheme. They can pay it to whoever you have nominated as a beneficiary but they are not legally obliged to do so unless you have made a Binding Death Benefit Nomination which are not offered as options by all funds. They can decide to pay it to your estate and then your will deals with who will benefit. Either way you should notify them of your preferred way of dealing with the money. If you are not certain what the rules of your Fund are then it is important to find out before you make a will as it may have an impact on what you decide to do.

WHAT IS MY ESTATE?

Your will can only operate over assets that are in your estate. Anything that is owned jointly with someone else will automatically pass to the other person unless it is held as “tenants in common”. Assets in family trusts, companies or superannuation are not automatically covered by your will. If you are involved in these arrangements it is important to get advice about the ways of ensuring these assets pass to whom you wish to benefit.

WHAT ABOUT WILL KITS?

The “homemade” will can be an unwittingly expensive and disastrous step due to uncertainty or ambiguity of words used, misunderstanding or ignorance of legal implications of gifts and not completing it correctly. All of these cause delay and expense for your family. The cost of a properly drawn will is not that expensive when compared with the costs of fixing up problems caused by “homemade” wills.

WHAT ABOUT TRUSTEE COMPANIES?

If the Public Trustee or one of the other trustee companies has made your will, they are often appointed your executors and charge a reasonably high commission when handling your estate. They may also be less flexible in how assets are to be distributed and are likely to take far longer to finish the administration of your estate. Their fees are usually far more than legal expenses would be if you choose a private executor who has advice and help from your lawyer.

HOW DO I ORGANISE A WILL?

Make an appointment to discuss your affairs with one of our friendly staff who will lead you through the process and help you decide how to set up your will and/or Power of Attorney. They will deal with issues such as joint property or investments, superannuation, trusts for children and grandchildren, second marriages, step-children, challenges of wills and estate planning for the next generation. You should review your affairs every 3 – 5 years or on a major change of circumstances. An out of date will can be as bad as no will at all in some cases and cause unnecessary heartache and expense for your family.

WHO CAN BE AN EXECUTOR?

Anyone over the age of 18 can be appointed an executor. The role of the executor is to be impartial to the interests of beneficiaries and to undertake the administration of the estate. Commonly spouses are initially each other's executor with others being appointed on the death of both of them. A common misconception is that beneficiaries cannot be executors. This is incorrect. It is common for beneficiaries to also be the executors. Whoever is executor is the person who has the power to make the decisions about disposal or distribution of assets. You may wish to nominate more than one person to act in this role. If so, all executors must agree on all aspects of the administration of the estate.

Whenever you make a will you should also consider matters such as Enduring Power of Attorney and Enduring Power of Guardianship. We can advise you what is best in your situation.

We offer a home visit service for the elderly or infirm if they are unable to get to one of our offices.

Call our office to find out more and make an appointment to discuss your affairs.

Check our website for more information at www.adelta.com.au