

Superannuation

Contrary to popular belief, superannuation does not automatically form part of your estate. This is because the trustee of the superannuation fund is the "legal" owner of the superannuation and makes the decision where it is distributed.

As the years pass, more and more of your wealth will be held in superannuation. There are differing rules between self managed funds and industry funds. Given the value of money held in superannuation, and the fact that the trustee has a discretion as to who your superannuation will be paid to, you will need to make sure that the trustee has the appropriate instructions as to who to give your super to. There are mechanisms that can be put in place to make sure the trustee must follow your wishes and SPM can make sure these are put in place.

Testamentary Discretionary Trusts

Depending on the likely value of your estate, and the risk profile of potential beneficiaries, consideration should be given to creating testamentary discretionary trusts (known as "TDT's"). TDT's are trusts created in a Will. The effect is that rather than obtaining a benefit directly, a beneficiary instead gets the funds in a trust which they can control.

Changing my Will?

Providing you have capacity, Wills can be changed during your lifetime. You should review your Will after any major life event (for example, marriage, divorce, children or passing away of any beneficiary) or significant change in asset holding (for example the purchase or sale of a business or investment property). It is also a good idea to review them generally every few years to make sure the distribution of the estate is still as you want it.

Potential Challenge

A Will should reflect your wishes. So, if you don't want a person to be a beneficiary, you can do so. This is known as 'testamentary freedom'.

Despite testamentary freedom, there is an ability for a spouse, child (including step child) or dependant to 'challenge' a Will. The 'challenge' is based on a spouse, child or dependant alleging that adequate provision for their maintenance and support has not been provided.

The right to 'challenge' is given in legislation so can not be contracted out of. However, steps can be taken to minimise the risk of any challenge and the lawyers at SPM can guide you through that process.

SPM

Sykes Pearson Miller has a long history of drafting Wills to reflect our client's wishes. We have a number of experienced lawyers capable of dealing with complex estates.

A Will is the most important document you will ever prepare as it states your wishes when you are no longer able. Can you afford not to have one?

Disclaimer: The information contained in this brochure is general in content and does not comprehensively set out the law in relation to estates. Although the information is current at the time of printing it should not be relied upon in substitution for professional legal advice. We strongly recommend that you obtain professional legal advice given no estate is the same. We expressly exclude all liability, including any liability from negligence in relation to this brochure.

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EXPERIENCE INTEGRITY RESULTS

a guide to

WILLS

and their importance

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If you've worked hard all your life to accumulate wealth, the last thing you'll want is for it to go to the wrong people, or worse, have it unnecessarily reduced by tax. So it makes sense for you to have control over:

- how and when your assets are distributed;
- who will carry out your wishes and administer your estate;
- who will look after your family, children, pets; and
- your funeral arrangements.

The only way to ensure these occur is to have a valid Will.

What is a Will?

A Will is a written document which states who you want to distribute your assets to and who is to organise this for you. As there are many pitfalls, the best practice is to have your Will prepared by a Solicitor, signed and witnessed correctly.

Why have one?

In the absence of a Will there are statutory rules (known as intestacy rules) which govern how your assets are distributed. This may not be how you want your estate to be given. It's even more important if you:

- have step children;
- are in a de facto relationship;
- have a family trust;
- own shares in a family company; or
- have superannuation.

These issues are not properly addressed by the intestacy rules.

Why use SPM to prepare a Will?

It's hard to know when you are out of your depth. Self prepared Wills may seem an attractive option, but if you get it wrong it can be worse than having no Will at all.

At SPM we have lawyers highly experienced in Will preparation and estate planning. They know the questions to ask to make sure your assets go where you want them to and to make sure your wishes will be followed.

What do I need to consider?

The usual order of distribution of your estate is:

1. Any debts or liabilities;
2. Any specifically mentioned gifts (can be cash or a specific item);
3. The balance.

So when you are thinking about your Will, you should consider:

Who is to receive a gift and:

- are there any conditions (such as reaching 21 years); and
- who would take the gift if the named beneficiary was to pass away before you?
- who is to carry out the wishes and administer your estate (i.e. who is to be the executor(s)).
- whether you wish to be buried or cremated.
- If you have young children, who you wish to be the guardians.

“The only things certain in life are death and taxes.”

Benjamin Franklin



Estate

The term “estate” is used to describe your assets that will be transferred to the executors under your Will. The executors then transfer the assets to the parties named in your Will (“the beneficiaries”). It is important to understand what assets and liabilities will be in your estate. It is also important to understand how the assets are owned to see if the asset will or won't form part of your estate. For example:

- real estate with multiple owners can be held either as: joint tenants, which means that the survivor automatically becomes the owner of the whole property, and the property does not form part of the estate; or as tenants in common, which means that the survivor continues to own their share however the executor will own your share and this will form part of your estate; and
- people can have trusts (including superannuation) and those assets don't form part of the estate;
- assets may be owned by companies. The company will continue after your death and the asset doesn't necessarily form part of the estate.

