

WILLS – the unavoidable topic

IT'S HUMAN NATURE TO REFUSE TO ACCEPT THE OBVIOUS
– NOTHING IS MORE CERTAIN THAN DEATH AND TAXES.
MAKING A WILL ISN'T MORBID – IT IS THE ONLY WAY TO
PROTECT HARD EARNED ASSETS.



Most people wouldn't leave their car door open with a wallet displayed on the front seat. Few people leave their homes open so thieves can help themselves but many people leave their estate wide open to claims. A valid will ensures assets go to those who are near and dear. The absence of a will leaves the estate open to claims from all and sundry and this includes the taxation office.

There is no legal obligation to make a will, but it is the smart option. Without a will assets can be distributed by anyone to anyone. When people die without leaving a will, assets are distributed according to a legal formula.

The process applies to financial assets, property, and may determine the guardian of children under 18 years of age.

Avoid creating ongoing hassles and legal wrangles by preparing an estate plan. This usually means writing a straightforward will and an enduring power of attorney.

Enduring power of attorney offers protection if an accident or a medical condition

prevents people handling their own affairs. An executor is appointed to ensure a will is followed to the letter. Power of attorney allows a trusted person to deal with financial and legal affairs of another.

A will can be relatively straightforward or a complex legal document incorporating protective clauses and tax effective structures such as testamentary discretionary trusts (TDTs). TDT's are not for everyone, but can be very advantageous.

TDT's may offer tax advantages and protect assets involved in Family Law Court proceedings or creditors threatening bankruptcy.

TDTs also protect spendthrift beneficiaries from themselves and ensure ongoing care for children, grandchildren and mentally disabled beneficiaries.

Legal advice is recommended when making a will. It is essential to cover all likely eventualities, choose an executor to administer the estate; appoint the guardians of children, list assets and liabilities (individual, jointly owned or placed in a

THERE IS NO LEGAL OBLIGATION TO MAKE A WILL, BUT IT IS THE SMART OPTION.

trust), name beneficiaries, show how assets should be distributed and make provisions for the future of any children.

Recent legislation allows people to place large proportions of their wealth into superannuation.

Superannuation is not always distributed according to a person's will because the asset is controlled by the trustee of the superannuation fund. This is not usually the executor of the estate.

The superannuation fund trustee may decide who receives the proceeds of the fund. This is an important estate planning issue.

O'Keefe Mahoney Bennett Solicitors has almost 40 years estate planning experience. For further information contact Simon Bennett on 07 5555 0000.



O'Keefe Mahoney Bennett

Level 1, 9 Seabank Lane, Southport Q 4215 Australia | P 61 7 5555 0000 | F 61 7 5555 0055 | E info@omb.com.au