

Your Will – How to Avoid 6 Big Mistakes

Still haven't make your Will? You're not alone! But ignoring the problem won't make it go away. Here are some strategies to avoid some easy blunders.

Not Making a Will

Each State has different laws providing how your estate is to be divided if you don't have a Will. The law that applies to your estate may be very different to your wishes. For example, your spouse may be required to share your estate with other family members – even if that means selling the family home. Your de facto spouse may need to prove their relationship to you.

Forgetting to Update Your Will

When was the last time you checked your Will? Are your nominated executors still living in WA? Are they even still alive? Do you still own the assets specifically identified in your Will?

These kinds of issues can greatly increase the difficulty of obtaining Probate and administering your estate. And the greater the difficulty, the longer it may take to be resolved and the more it is likely to cost.

Choosing the Wrong Executor

Your executor has enormous power over your Will and estate. If you choose the wrong person, administration could be greatly complicated and your beneficiaries might not receive their full entitlements.

At its worst, beneficiaries may need to start court proceedings to remove an executor. That can be time consuming, expensive and stressful and not at all what you would wish for your family and friends.

Having an Incomplete Will

A properly drafted Will takes account of everything that you own. If your Will misses something, then that asset will be treated as if you died without a Will. That means that it could go to the "wrong" person.

Misunderstanding Ownership of Assets

You don't own assets that are held by a company – even if you are the only director and shareholder. Similarly you don't own assets held by a trust, even if you are the only trustee.

You should also check the ownership of assets you hold with another person. The legal implications of owning assets “jointly” are very different to owning something as “tenants in common”.

If your Will tries to deal with assets that you don't own, then problems can result.

Bad Planning or Failing to Plan

Do you own a business? How badly will your business be impacted by your death and have you put plans in place to deal with that? If your interest will have to be bought out, how will that be funded?

Have you assessed the risk of someone attempting to challenge your Will? Have you taken steps to minimise that risk?

Have you taken advantage of the rules relating to superannuation? Have you taken steps to minimise the taxation impact of your Will?

These issues can greatly impact upon the effective administration of your estate and the benefits received by your beneficiaries.

If you have any questions regarding this article or anything relating to an estate, please call Nova Oldfield on 08 9331 5722 or email nova@oldfieldlegal.com.au.