

Why You Need a Will



MULCAHY & CO

Helping committed clients achieve and maintain financial security.

CHOOSING WHERE YOUR ASSETS GO

Planning what will happen after we die is not something many people look forward to addressing. However, it is important because not only will your loved ones have to deal with the grief of your “departure”, they may be left to manage the conflict and angst that can arise when you don’t leave a Will.

Intestacy: If you die without a Will you are deemed to have died intestate. If this occurs, your assets will be distributed according to a standard government prescribed formula. In our experience this formula has the potential to cause a lot of heart ache to the deceased’s family and is not in many cases the deceased’s intention.

Let’s look at some scenarios that may help convince you to finally get your Will done!

MARRIED WITHOUT CHILDREN?

If you die married or in a domestic partnership without children, your spouse is entitled to the whole of your Estate.

Did you know that for a beneficiary to be entitled under your Estate they must survive you by 30 clear days?

What happens if you and your partner both die within 30 days of each other?

Tom and Linda are a young married couple without children, they are involved in a car accident and both die.

Under Victorian Legislation the eldest of the couple is deemed to have died first. This means that all of their combined assets are passed on to the younger spouse. However in this case as they are also deceased the assets then get passed to the younger person’s parents.

In this example Tom is older than Linda, so he is deemed to have died first. All assets are transferred to Linda, but as she has also died, the entire estate assets are passed on to Linda’s parents. Leaving Tom’s family with nothing.

MARRIED OR IN A DOMESTIC PARTNERSHIP WITH CHILDREN?

If you die leaving a spouse with whom you have a biological child or children, then your spouse is entitled to the whole of your Estate.

This being said, if you have a child or children to someone other than your spouse, the distribution is dependent upon the wealth of your Estate and the Partner’s Statutory Legacy figure, being \$451 909.00 as at the commencement date of the Section and adjusted yearly in accordance with the CPI.

If your Estate is worth less than the Partner’s Statutory Legacy, then your partner is entitled to the whole of your Estate. The concern in this case, is that upon your partner’s death they may fail to provide for your child or children.

If your Estate is worth more than the Partner’s Statutory Legacy, then your partner is entitled to your personal chattels, the Partner’s Statutory Legacy sum and interest on the Partner’s Statutory Legacy sum from the date of your death to the date of payment. The residual amount after the payment of any debts and the above provisions for your spouse is to be divided into two equal parts – one for your spouse and one for your child or children outside this relationship.

Let’s consider some examples:

Tom and Melissa are married, they have no children together, however Melissa has a son, Matt from a previous relationship. Melissa dies in January 2021, intestate, leaving a personal estate of \$1 million dollars. As per the previous June, the Partner’s Statutory Legacy is set at \$480,700.00. If the distribution of Melissa’s assets occurred on the date of death (which could not occur), Tom would be entitled to a total of \$740,350, being the Partner’s Statutory Legacy of \$480,700.00 plus one half of the residue being \$259,650.00. Matt would be entitled to the other half of the residue being \$259,650.00.

Alternatively consider if Tom and Melissa had two children of their own, Penelope and Mary, and Melissa also had her son Matt from her previous relationship. Tom’s distribution would be exactly the same, however the other half of the residue being \$259,650.00 would be divided equally between Penelope, Mary and Matt, each receiving \$86,550.00.

Consider if Melissa’s Estate was worth \$400,000.00. Tom would receive the whole of Melissa’s Estate as the Estate is worth less than the Partner’s Statutory Legacy. Matt, Penelope and Mary would receive nothing.

The Act provides, that should an intestate person’s children predecease them leaving children, then the share to which they would have otherwise be entitled shall be provided to their child or children.

So, in the above examples, if Matt had predeceased Melissa leaving a son Ben, then Ben would have been entitled to Matt’s share of Melissa’s Estate.



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SEPARATED BUT NOT DIVORCED?

The formula mentioned above also applies if you are separated but not divorced. If you don't have a Will in place, and are not yet divorced, your husband or wife could end up with a significant part of your assets.

If you have recently separated you should consider who you would like to receive your assets and have a Will prepared accordingly.

If Maddi and Sean had separated but not divorced, and Sean dies intestate, Maddi would be considered Sean's partner under the intestacy provisions and would be the sole beneficiary of his Estate.

Let's say Jill and David live in a de- facto relationship and David's total estate is worth \$1m. David is not yet divorced from his ex-spouse, Helen. If David died without a Will, the law would treat David as though he died leaving multiple partners. Jill and Helen would both be entitled to his Estate. The division of the Estate would be divided between the two by a distribution agreement, a distribution order by the Court, or in equal shares.

What is important to consider, is that these rules apply, whether you have been separated from your ex-spouse for 12 months or 12 years.

DO YOU THINK YOUR SPOUSE IS LIKELY TO RE-MARRY IF YOU DIE?

Let's say your husband or wife re-marries. Perhaps they will have more children with their new partner. How would you feel if your children missed out?

Perhaps you would like to leave them something direct in your Will to avoid this scenario.

What if their new partner turns out to be a gambler? What if they had access to the inheritance which was put in a joint bank account? You can leave your estate to your partner via a testamentary trust that can help protect it from this scenario.



ESTATE EXECUTOR AND FAMILY TRUST

Geoff was executor of his parent's Estate when he suffered a heart attack and his Estate passed to his wife. Unfortunately, that meant she stepped in to control her parents-in-law's estate.

Geoff's siblings were not happy especially as she became the appointor of the family trust. As a trust does not form part of an Estate, she had complete control over all trust assets. If Geoff had a Will made that included passing the executor role to his brother, it would have avoided a lot of heartache.

CHILDREN?

Have you considered who will look after your children if you both die? Who will manage their inheritance until they come of age?

You need to identify your preferred guardians and talk to them about these and other lifestyle issues regarding your children.

ARE YOUR CHILDREN RESPONSIBLE?

If both parents die in a car accident for example, the children could have access to their inheritance when they turn 18. Perhaps you would prefer that they were a little older before having access to all that capital.

Most people prefer their children to be at least 25 year old, these days with a responsible person (e.g. an aunt or uncle) managing their finances until then. There are estate planning solutions to manage this request but if you die without a Will your children will have full access when they turn 18.

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HAVE YOU RE-MARRIED? DO YOU HAVE SUPER?

Perhaps you have older children from a prior relationship. Be aware that if you have Super it may automatically be left to your new spouse and your adult children may get none of it.

Also be aware that a de facto may also be entitled to your super, not just a married spouse. Proper estate planning can ensure your assets are left to those you want to receive them.

NO CONTACT WITH A PARENT?

John was a recent client concerned about his brother's estate as he had died without a Will. His brother Paul, who was in his 30's, had died unexpectedly. He was not married and had no children. Consequently according to state law, his estate was to be left equally to his mother and father.

This sounds fair except that their father had walked out of their lives when they were very young and not only had they never seen him again, he had provided no financial support over all those years. Is that what Paul would have wanted?



CONTEMPLATING MARRIAGE?

Upon marriage, an existing Will becomes invalid. However you don't need to wait until you are married to have a Will done or to update it. To ensure the Will remains valid after marriage it needs to recognise it is made 'in contemplation of marriage', with the future spouse noted accordingly.

PREPARING FOR FUTURE CHILDREN?

You also don't need to wait until you have children before you have your Will done. The Will can cater for this by referring to all children alive at the time of death or born after the Will maker's death. This also means you don't need to change your Will each time you have a child.

ARE NONE OF THESE EXAMPLES RELEVANT TO YOU?

One final check. If you answer yes to all of the following statements, then you may not need a Will at the present time.

- You are single
- Have never been married
- Have no children
- You do not own any substantial assets
- You are happy with a government prescribed formula

Any "No's"? Talk to your adviser.

Of course having a Will in place is critical but it's also important to ensure you have the right one to suit your particular situation.

With our depth of experience and focus on providing positive outcomes, we would be pleased to help.



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FS360 - What does being financially secure mean?

It means assessing your personal and business goals and developing a plan to achieve these.

We have identified **12 key areas** to help you become financially secure:

- 1. Goals & objectives**
- 2. Estate plan**
- 3. Risk plan**
- 4. Asset protection plan**
- 5. Taxation plan**
- 6. Debt plan**
- 7. Retirement and succession plan**
- 8. Business plan**
- 9. IT Plan**
- 10. Marketing Plan**
- 11. Superannuation plan**
- 12. Investment plan**

Setting goals and objectives and having strategies to achieve these is an essential element of becoming financially secure. Once you know what you are aiming to achieve and how you are going to get there, we then need to make sure you have a strong foundation in place to protect you, your family and other investments.

A strong foundation needs an estate plan, risk, plan, asset protection plan, taxation plan and debt plan. With the foundations in place we can then work on the strategies to achieve your goals and objectives.

It may seem out of order that we have the retirement and succession plan at number 7 rather than 12. It is important that this is considered early and a plan is put in place. This assists to plan for this financially as well as keeping the communication lines open on the topic.

12 Steps to becoming Financially Secure

1. GOALS AND OBJECTIVES

Picture yourself in 10 years time... Where do you want to be? How are you going to get there? Being clear on your goals & objectives ensures you can develop a strategy to achieve them.

2. ESTATE PLAN

"What will happen when I'm gone?" Only assets owned in your name are covered by your will. Your Estate Plan protects your family from the potential threats that your Will does not.

3. RISK PLAN

Your Risk Plan addresses whether you need to save or insure to protect your family's financial security in the event of an injury, accident or death.

4. ASSET PROTECTION PLAN

An Asset Protection Plan makes sure your assets are owned in the right names or entities so you limit the risk of them being exposed to creditors.

5. TAXATION PLAN

A Taxation Plan structures your affairs so that you legally pay the least amount of tax and retain more of your income.

6. DEBT PLAN

A Debt Plan ensures your assets aren't over exposed to debt and structures your debt to maximise tax deductibility of the interest.

7. RETIREMENT PLAN

Retirement is setting the date when you can choose to stop work. Your Retirement Plan details the income and assets you need (in addition to superannuation) to retire and outlines the steps to get there.

8. BUSINESS PLAN

Your business value is the one asset or investment that you have full control over. How does the business cashflow, profitability and end value fit with your overall plan? Review the 10 characteristics of what makes a great business to help your business reach its full potential.

9. I.T. PLAN

Your data, your email, your devices – they play a key role in the smooth running of your business. Backups, workflow and ongoing maintenance of technology can be a game changer.

10. MARKETING PLAN

Promoting your business to potential clients has many working parts. Generating enquiry and building your brand is key to your business success.

11. SUPERANNUATION PLAN

Many people miss out on the enormous tax benefits of superannuation. A Superannuation Plan will ensure you have a strategy to produce greater wealth at retirement.

12. INVESTMENT PLAN

An Investment Plan will increase your asset base, while focusing on preserving your capital and managing your risks, to meet your personal and financial goals.

We offer a free no obligation meeting to review your situation. Call us today on 1300 204 781 and take advantage of this valuable offer.