

# Making a Will

## - other considerations.

### Seeking Specialist Advice

Estate planning is an area neglected by most people. Very few people have had to deal with issues arising from inadequate estate planning and even fewer people openly share these issues in detail in public. Details of your finances and family disputes are not topics often discussed in open conversation.

The preparation of a Will is a specialised task which requires the consideration of complex laws regulating deceased estates, family dynamics, financial and taxation issues to ensure that your estate is disposed of in accordance with your wishes. Understanding your unique circumstances are essential to ensuring that your wishes are accurately and properly documented.

Everyone is different and specialist estate planning advice is usually recommended where you have substantial assets; hold your assets in different entities, including trusts or company structures; and where there are complex family issues including blended families.

Comprehensive estate planning has potential tax savings for beneficiaries, it can reduce disputes and ensure that your desired beneficiary will keep their inheritance.

### Superannuation and life insurance

Any superannuation or insurance payments on your death do not automatically form part of your estate property to be disposed of in your Will.

To have superannuation and insurance payments paid to your chosen beneficiary you should ensure that your superannuation fund and/or insurer are aware of your wishes by making a binding death nomination.

Superannuation and life insurance payments will only form part of your Estate if the nominated beneficiary is your Legal Personal Representative.

### Minor children

If you leave property to someone who is still a minor at the time of your death, your Will should



## Chamberlains. Law Firm

make provisions for how that gift is to be dealt with until they are at least 18 years old. You may also wish to specify who you would like to act as guardian of your minor children in your Will.

### Family Provision Claims

It is important to remember that family members (such as your spouse and children) may apply to the Court for provision from your Estate or further provision if you have not made adequate provision for them in your Will.

Contrary to the common myth that if you leave 'something' to that person that will prevent them from making a claim on your Estate, a Family Provision Claim can be brought against your estate by anyone who is eligible under the relevant Family Provision legislation in each State and Territory. Eligibility to make a claim under the legislation can be quite broad and you cannot remove a person's legal right to make a Family Provision Claim.

If you are concerned about a person making a claim against your estate, there are certain things you can do with your estate planning to minimise the chances of a claim being successful. It is therefore extremely important that you seek appropriate legal advice in these circumstances as there can be costly consequences for your Estate and your estate distributed in a manner against your wishes.

### Life Interest or Right of Residence

It is common for people to want to gift real estate to a person or persons (such as their children), while at the same time ensuring that another person, such as their current partner, can reside in the premises. This is called a 'life interest' or a 'right to reside' clause. The person entitled to reside in the property is called the 'life tenant' and the person receiving the property is called the

'residuary beneficiary'. Such life interest clauses must be included in your Will and appropriately drafted to be effective.

This provision is of particular value to blended families who want to ensure that their respective share of the property held with their current partner passes to their children, whilst ensuring that the accommodation needs of the surviving partner are taken care of.

The suitability of this provision, and the particular drafting of this provision, will depend on your family structure and how your real-estate assets are held. There are complex issues that can arise when putting these provisions into practice, and it is therefore important to ensure that the Will is drafted appropriately. Well drafted life interest clauses can prevent disputes from arising between the life tenant and residuary beneficiary.

**At Chamberlains Law Firm we will assist you in reviewing your current Will, call us today to make an appointment!**



**Sydney | Canberra | Perth | Newcastle**



[www.chamberlains.com.au](http://www.chamberlains.com.au)



[hello@chamberlains.com](mailto:hello@chamberlains.com)

