What is a will and why do I need one?

David Landa Stewart
Lawyers since 1927

Your will is a legal document to distribute your assets upon death.

The document enables your executors to deal with your assets according to your wishes.

The assets of real and personal property are usually left to benefit your family and the people you love and care about. You might also wish to provide a gift to a charity in your will.

Other issues such as funeral and burial requirements, organ donation and distribution of superannuation entitlements are also considered in the estate planning process.

If you don't have a will, you die intestate and your assets are distributed according to the succession laws. These vary in different States and Territories in Australia.

At present, in NSW the situation varies depending on your personal situation at the date of your death:

- If you leave only one surviving spouse and no children, or a surviving spouse and only children who are also the children of your surviving spouse, then the surviving spouse will receive the whole of your estate.

- If you leave children who are not also the children of your surviving spouse, then your surviving spouse will receive all your personal effects, $350,000 (this amount is adjusted for each year after the legislation was enacted in 2006) and one half of the balance of your estate. Your children will share the other half of your estate.

- If your spouse does not survive you, but you leave children surviving then the whole estate will be divided between your children (or grandchildren, if a child has died before you).

- If there is no legal or de facto spouse or direct descendants, the deceased's parents receive the whole estate, otherwise it goes to brothers and sisters or certain other close blood relatives.

- If none of these relatives are alive, the estate goes to the Government.

This may put your spouse in an impecunious position and they may struggle financially if you leave children who are not children of that spouse.

It also means that distributions are made without any consideration of the financial need or circumstances of any of the beneficiaries.

Some loved ones may be excluded as a result. Step children for instance have no statutory entitlement to any of your estate if you die without a will. Business partners have no automatic entitlement to your share in any business if and when you die.

If you do not have any next of kin then your property defaults to the crown.

The legislation also deals with more complex family scenarios – for instance where there have been multiple marriages.

To avoid these disturbing consequences we strongly recommend to all our clients that we help them design a will (and other ancillary documents) that best suits them so that they can leave their assets to the people they care about.

Please contact us if you wish to schedule an appointment to discuss your will.

Our goal is to make your estate planning decisions easier, by:

- Understanding your financial and personal circumstances;
- Considering all the options available;
- Discussing the complex legal issues with you;
- Applying our legal skills and practical knowledge and experience;
- Preparing comprehensive and robust documents to suit your particular needs;
- Guiding you throughout the process - from our first meeting through to signing the documents.

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