Legally Speaking

HELMORES LAWYERS

Where there is a will...

Modern day families can be complex, and your family situation may include children from prior relationships, blended families or family fall out.

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These matters and your asset structure should be adequately considered when it comes to your estate planning.

The distribution of your assets after your death should reflect your unique family and asset situation (subject to legislation such as the Family Protection Act 1955 and the Property (Relationships) Act 1976).

It is our broad opinion that every person of sound mind over the age of 18 years old should consider preparing a will (a person of sound mind who is under the age of 18 years old can make a will if they are married, or in a defacto relationship).

A will is a legal document which sets how you want your assets to be distributed after you have passed away. It should state who gets what and when and can include considerations such as guardianship for minors.

A will enables you to direct that on your death, your assets be distributed in accordance with your preferences.

It is your chance to expressly state your wishes, although there are laws your will needs to comply with or it can be challenged.

Your will should consider:

1. Your relationship status;
2. The nature of your relationship with your family including your children and other dependents;
3. Who you wish to administer your directions;
4. Specific gifts;
5. Your assets;
6. Guardianship for children;
7. Pets;
8. The Family Protection Act 1955;
9. The Property (Relationships) Act 1976;
10. Step-children and blended families;
11. Special funeral requests; and
12. Who you wish to distribute your assets to and how.

In the absence of a valid will, you die intestate', and the Administration Act 1969 provides directions as to how an estate must be distributed.

Section 77 of the Administration Act 1969 directs that assets of an estate must be distributed in the manner set out in that section.

Examples of the distributions are as follows, if you die with:

1. A spouse or partner but no parents or children: your spouse receives your entire estate;

2. A spouse or partner and children: your spouse receives your personal effects, $155,000 and a third of anything left. Your children will receive the remaining two thirds, divided equally between them;
3. A spouse or partner and parents but no children: your spouse will receive your personal effects, $155,000 and two thirds of anything left. Your parents will receive the remaining third divided equally; or
4. Children but no spouse or partner: your children receive the entire estate shared equally among them.

Whilst preparing a will can be costly, the consequences of dying intestate are likely more expensive, time consuming and stressful for your family, if the distributions contained in the Administration Act 1969 do not reflect your family circumstance.

Accordingly, it is recommended that every person consider preparing a will that adequately considers the intricacies of your circumstances in light of the Family Protection Act 1955 and the Property (Relationships) Act 1976.

It is also important to note that as time passes and your circumstances change, you should review your will to ensure that it remains relevant. For example, if you have a breakdown in your relationship but you do not update your will, your ex-partner still may benefit from your estate.