

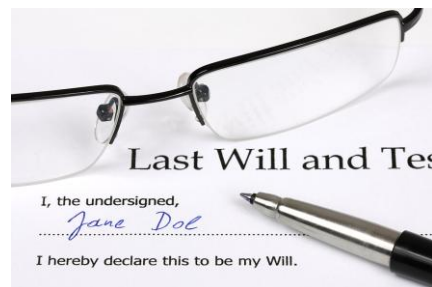
# Estate planning to protect your wealth



**There are two certainties in life: Death and Taxes.  
Try as you might, you can't avoid either.**

## Did you know:

- Approximately 60% of Australian's die without a Will in place?
- The average age of people with a Will is 82?
- The average age of people who die without a Will is 62?
- Most Australian families earn less than \$75,000 per annum and will be lucky to have sufficient capital to survive what is now for most workers a 15-25 year retirement?



**Estate Planning** is not just about having a Will, it's about tidying up business structures and succession. Estate planning is about taking control. It involves thinking about how you will provide for and protect your family, how you will build and protect your wealth, and how you will share your wealth with the people you care about. This involves dealing with such issues as:

1. How you will continue to look after your family and business if something happened to you or your spouse, and
2. Planning how to prepare your children for responsible independence

These issues are relevant throughout your life, not just on your death. In fact as people live longer, they are increasingly looking to transfer wealth to the next generation during their lifetime, in a structured and planned way. While most people consider their affairs to be simple, the reality today is that a growing number of people have complex affairs. This is a result of increasing complexity in laws associated with investment, family, superannuation, and taxation.

Proper consideration of these issues raises a number of commercial, taxation and financial issues.

**The best legal way of protecting your wealth distribution is your Will.** You should ensure that it is up to date, and has been drafted with proper regard to your personal, family, business and investment structures. Let's consider some of the complexities and questions that might apply to you:

## **Do you have a “family trust”, “investment trust”, “farm trust” or “business trust”?**

If so, did you know you cannot deal with trust assets in your Will because trust assets do not form part of your personal “estate”. Passing control of assets held in a trust is not a simple matter, either when you are alive or when you die.

## **Do you carry on a business, either in your own name, or through a trust, partnership or company?**

If so there are more questions you need to consider:

- Are your personal and business assets protected from claims?
- How much thought have you given to your “exit” – either planned or unplanned?
- Do your insurances tie-in with your needs and structures?
- Will you end up in business with your partner's spouse?
- What tax issues will arise on the sale of your business, eg. capital gains tax?

**Do you have divorced children, or children at risk of divorce? Have you considered how to safeguard any gifts to such children to ensure that the assets stay within the family?**

**Do you have dependent children, either under 18 or with some form of disability?**

If so, who will look after the children if you die or become incapacitated?



**Do you own shares in a company?**

If so, who will control these shares, who will be appointed a director of the company and how should they act? Are there any director/shareholder guarantees in place – how will these be satisfied or replaced? Is there a Shareholders' Agreement – and does it contain appropriate “succession” clauses?

**Do you have a Self Managed Super Fund (SMSF)?**

If so, who will control the assets if you die or become incapacitated – who will be the trustee? Have your pensions been structured properly, with appropriate reversionary clauses? Is the Deed up to date, providing for the full range of possible pension benefits, binding death nominations, and the proceeds of any life policies held in the fund?

**Do you hold “income protection”, “business interruption” or “life and disability” insurance policies?**

If so, who owns the policies, are they held in the appropriate entity (e.g. in your own name, in a super fund or through a proceeds trust)? What tax deductions can you claim for premiums, and what will be the tax treatment of any payout?

**Do you own one or more investment properties?**

If so, who holds the title and in what capacity, what is the extent of cross-security, have you forgone “asset protection” to get access to “negative gearing”, are you paying too much land tax?

**Do you have significant loans – both with related entities and banks?**

If so, from what assets will these loans be paid out if you die or become incapacitated – will that impact a specific gift to a beneficiary? Is the loan and any associated life or disability insurance held in the same entity?

**Do you have children from more than one marriage?**

If so, are all your children adequately provided for, and will any gifts be administered by someone who will act in the best interests of each child?

**Do you wish to make a contribution to society in the form of a charitable gift either while you are alive or on your death?**

If so, have you considered a “charitable trust” or “charitable foundation” and the tax consequences of charitable giving through your Will?

There are so many questions to be answered and a small amount of time invested now can help you to work through all of these issues but in order to do that we need to make sure the following errors in planning your estate are covered off:

**Invalid, no Will, or is out of date**

The right time to update your will is now. Not tomorrow, not after the weekend, not 'when things quieten down'. You should review your Will every 12 months, and probably update every 4 years.

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### **Failing to minimise death taxes**

You are taxed long after you die. Your estate is reduced by three de-facto taxes - income tax, capital gains tax and stamp duty. Failure to plan allows these taxes to eat into your estate's value.

### **Appointing an unsuitable executor**

You need to appoint an executor in you Will. They handle your affairs after you die. Know the costs when appointing professional trustees and lawyers as your executors as they work hard on the issues and high fees could be racked up.

### **Failing to include both intended and unintended beneficiaries**

Carefully consider who you want to be a beneficiary in your Will. Ensure that any witnesses to your Will do not receive anything under it.

### **Failing to dispose of all assets**

Carefully consider your assets. You should provide for all assets that you wish to distribute. You should also include a provision that covering any beneficiaries that cannot inherit as you intended.

Include a residuary clause in your Will. This allows you to keep control over any leftover assets. If there is no residuary clause, the State can decide where your residuary assets go.

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### **So who can challenge my Will?**

Only certain people are potential challengers and they include:

- Your parents
- Your spouse – the person you are married to but could also be your de facto
- Your children (adopted children but not children born from sperm or egg donation)
- Your grandchildren
- Anyone that you are 'maintaining' (not in all States).

Sadly nothing you can do will take away the above people the right to challenge. You can't use your Will to force someone to do or not do something. This is called 'ruling from the grave'. Just because someone can challenge your Will, doesn't mean that they are successful.

**Your Will is one of the most important documents you will ever sign and forms the foundation of your Estate Plan. You worked hard for the assets you have. Make sure you have the final word on where they go.**

### ***What to do next?***

***Our job as your trusted adviser*** is to work through your financial and business structures so that we can be the central spoke in coordinating your complete Estate Planning needs with your solicitor and any other third parties. If you are unsure on your answers to any of the questions in this article, then **please click on the link in the email to book a meeting with us or call on the number below.**