

What do I need to know about Wills?

Article by Townsville Lawyer, Ivan Baxter, Director of O'Shea Dyer Solicitors.

10 August 2021

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- **Everyone should have a Will and an Enduring Power of Attorney.**
 - **What is an Enduring Power of Attorney?**
 - **Do not go to the Public Trustee.**
 - **Do you need a Testamentary Trust Will?**

Everyone should have a Will.

My constant crusade is to ensure that *everyone* has a current, valid Will.

O'SheaDyer Solicitors has had many clients over the years who have had loved ones pass without a Will, and others who have left an invalid Will. This has been very messy and very stressful for loved ones and frankly, it's the last thing you need when you are grieving.

We have experienced Wills and Estate lawyers who prepare Wills and Estate documents all the time and we have designed a great incentive for people to get their Will done.

When we prepare your Will, we will also prepare an Enduring Power of Attorney (EPA) document for No Charge.

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We have also made prices for Wills the lowest we possibly can. Our prices for a standard Will start at \$440 inc gst for a single and \$770 inc gst for a couple.

And for these low prices you are getting and EPA included for free!

What is an Enduring Power or Attorney (EPA) Document?

Everyone should have a Will. AND everyone should have an Enduring Power of Attorney. An 'EPA' is a document where you give someone you trust, authority to make decisions for you. This comes in very handy if you are unavailable or unwell. And it is highly valuable as you get older in circumstances where you are incapacitated. As long as you create an EPA while you are of sound mind, you will have a trusted person who can make decisions for you – even if you no longer have capacity.

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Please, do not get your Will prepared by the Public Trustee.

Over the past few years, we have had a number of elderly husband and wives come to see us after their spouse has passed away. They had both done their Wills for free at the Public Trustee and agreed to making the Public Trustee an executor in their Will. They were then locked into using the Public Trustee to administer their loved one's estate. The fees that were charged to administer the modest estates were extremely expensive. Much more expensive than a lawyer would charge. And on top of this, the process of tidying up their loved one's Estate, which should have been sensitive and inexpensive, was impersonal and stressful.

Do I need a Testamentary Trust Will?

We recommend, if you have assets (excluding Superannuation) in excess of \$1 million dollars, you should consider having a Will that contains a Testamentary Trust.

A Testamentary Trust is a trust created within your Will. You appoint trustees and set out the terms of the Trust in your Will. It is a Trust that comes into effect *after* your death. It is designed to give the trustee's discretion and great flexibility to decide how and when to distribute assets/money in your Estate, to your beneficiaries.

There are 2 main advantages to a Testamentary Trust.

1. You can protect your loved ones and your assets.

Usually people leave the majority of their estate to their children as the main beneficiaries. There are many situations where you may not want your child/adult child, to receive a large lump sum. For example,

- They may not be old enough to manage a large amount of money.
- They have special needs and may not be able to manage a large sum of money.
- They may have an addiction, and it is better to 'drip feed' money rather than give a large lump sum.
- They may have a business that borders on bankruptcy.
- They may be in a marriage that is shaky, and you don't want part of the estate money going to their 'ex' if a divorce is pending.

A Testamentary Trust gives a Trustee great discretion to decide how and when to distribute money to your beneficiaries.

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2. The Trust minimises the tax that beneficiaries will have to pay when they receive assets or money.

- Any income, capital gains and dividends can be distributed to your beneficiaries each year in the most tax-efficient way.
- Distributions can be made to minors under the age of 18, tax free (up to the marginal rate).

A Testamentary Trust Will is designed to be specific to your situation and can be quite complex. It takes longer to prepare than a standard Will and naturally, it costs more.

We have experienced Estate lawyers who have prepared many Testamentary Trust Wills for people over the years and our fees are very reasonable.

The best thing to do is to obtain legal advice as to whether you need one and how it can best cater to your situation.

We have some useful information on our website about Wills and Estates. If you get the chance, have a read. [Wills and Estate Lawyers in Townsville | O'Shea & Dyer Solicitors \(osheadyer.com.au\)](https://www.osheadyer.com.au/wills-and-estate-lawyers-in-townsville)

Where to from here?

Ivan Baxter is a lawyer with over 36 years' experience. He is the Director of OSheaDyer Solicitors Townsville. Ivan has experience in many areas of law including Wills and Estates though he now practices almost exclusively in Litigation managing Compensation Claims.

We always recommend that people see an experienced lawyer when legal issues arise. Experience matters when you are seeking Estate advice. Everyone's situation is unique. Make sure you obtain advice that is tailored to your situation.

O'Shea Dyer Solicitors have experienced Estate lawyers who are available to assist with Estate Planning and Estate Administration.

Call O'SheaDyer on 47 725 155. We would love to help.