

What is the Point of doing a Will?

Article by Cathy Fon, Wills and Estates Lawyer O'SheaDyer Solicitors.

12 August 2021

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- **Do a Will – Don't leave a headache for your loved ones.**
 - **Do a Will – It is easy and not that expensive.**
 - **Don't use the Public Trustee.**
 - **How to Prepare for a Wills Appointment at OSheaDyer Solicitors.**
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Everyone should have a Will.

Did you know that about 40% of Australians **do not** have a Will? That is 2 people out of every 5! When you don't have a Will, you are leaving behind an awful headache and a lot of angst for your loved ones.

It really is very easy to do a Will. If you come to OSheaDyer Solicitors to do a Will, we hope you go away thinking, "*That was easy, why didn't I do it sooner?*"

At OSheaDyer Solicitors, we also make it very affordable to have an experienced lawyer prepare your Will.

Straightforward Wills start at \$440 (inc gst) for a single person and \$770 (inc gst) for a couple.

We also include an Enduring Power of Attorney document for free.

What is the Point of doing a Will?

To appoint your Executor

Perhaps the most important reason to do a Will is to choose a person who will have the legal authority to finalise your affairs after you have died. This person is called your Executor. When you pass, there will be things that need to be sorted out. Bank Accounts, superannuation funds, and property will need to be closed, finalised or transferred. Organisations like banks, super funds, nursing homes and so on, will need to deal with a person who has *legal authority*. They may not simply deal with your closest relative or best friend. Legal authority is best given in the form of a Will that appoints an executor. Normally, people appoint one or two people as their executor, though you can appoint up to four people. They will make decisions together to sort out your estate.

Your executor/s can act alone to sort out or *administer* your estate, though sometimes executors engage a lawyer to assist them. If there is property to be transferred or the estate is substantial, it may be necessary to do this. Lawyers charge fees for the work they do. The fees are paid from your estate, or if the executors pay them, they will be reimbursed to them from the estate.

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To give instructions about how you want your estate to be distributed

This aspect of a Will is the best known. Who do you want to inherit your assets? Sometimes there is a straightforward answer to this, such as:

"I leave everything to my partner, then after we have both passed away, we want everything to go to our children".

Or

"I leave a cash gift to my best friend, then the rest is left to my siblings in equal shares".

But there are countless variations to the 'usual' scenarios. Every person has particular wishes and (almost) all of these can be put into your Will.

To appoint a guardian for your children

If you are the parent of a child under the age of 18, it is very important that your Will nominates a person who would act as guardian of that child in the event that both parents have passed away.

What happens if I don't have a Will?

If there is no Will, then there will be no certainty about any of these issues. Without a Will, there is no clear direction about who has legal authority to sort out your estate and there is no clear statement about how your estate will be divided.

It is possible that someone will be forced to make an expensive application to the Court for the appointment of an Administrator. The Court may even appoint someone to administer your estate who you would not have chosen (eg. A spouse from whom you have separated but not yet divorced).

Once the Administrator is appointed by the Court, then that person will distribute the assets of the estate in accordance with the 'law of intestacy'. This provides an order of priority for family members to receive the estate: a spouse (including ex-spouses in some cases), children of the deceased, then parents, siblings, nieces/nephews, grandparents, aunts/uncles. This may not be the way that you want your assets shared after you have passed away.

If you don't have a Will, the law of intestacy must apply.

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Should I use the Public Trustee to do my Will?

We sometimes hear people say that they are going to get a free Will prepared at the Public Trustee. We do not recommend this, because it is usually the case the Public Trustee will appoint themselves to be the executor of the Will.

Once you pass, if they are the executor, they will charge your estate for doing the job of being your executor. Our experience is that the fees they charge are a lot higher than they might have been, if you had appointed a family member as executor in a Will.

It is free to prepare the Will at the Public Trustee, but your family will be worse off when your estate is eventually distributed.

How do I prepare for an appointment about making my Will?

Every person is different, so there is no set list of what will be discussed in your appointment.

These are the usual things we talk about in your appointment. It is a good idea to have thought about them before you come in. If you haven't, that's ok. We will help you figure what is best for your situation.

- **Who will be your executor?** You can appoint more than one person. Think of a person who you trust completely who is capable of administering your estate in the best interests of your beneficiaries. This is often your spouse, or one (or two) of your adult children, or your best friend.
- **Think about your beneficiaries.** This might simply be your spouse and/or your children. But will you include stepchildren? Estranged children or other relatives? If you are not married and you don't have children, will you leave your estate to your parents or siblings or a friend? You may wish to leave it to a charity or two.
- **If your children are very young:**
 - it is possible that children may inherit something from an estate while they are young. What age do you want your children to receive the money? 18, 21 or 25 years?
 - who is to be the guardian(s) of your children?
- **We will discuss the contents of your estate.** Your current assets and liabilities, including residential and investment property, family heirlooms and jewellery, shares in a private or public company, collections of value, loans owed by you or to you.
- **If you operate a business or have a family trust or company.** We will discuss the structure of these. It is helpful to bring along copies of your business documents, such as trust deeds and company extracts.

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- **If you own assets in another country.** Or you think you might in the future, we will discuss preparing a Will that can be recognised in that country.
- **If you wish to make a gift to charity.** You should decide beforehand which organisation you wish to mention in your Will.
- **Your superannuation fund(s).** We recommended you bring along your most recent annual statements. If you have a self-managed fund, then we will need to look at the Deed which sets out the rules.
- **If you have any life insurance policies.** Bring along the relevant paperwork.
- **If you have previous Wills.** Bring along copies of them.

Cathy Fon is a Wills + Estates lawyer at OSheaDyer Solicitors, Townsville. Cathy was Admitted in 2005 and has worked part-time as a lawyer for many years since. Cathy has been working exclusively in Wills + Estate since 2019.

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 Wills and 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.