

Why Do I Need a Will? The Importance of Estate Planning for Any Stage of Life

Making a will is an important consideration in all stages of life.

There are many reasons why you should consider a will. Perhaps you have bought a new home, you are married or in a de-facto relationship, you are a new parent, you want to avoid potential disputes after you pass, or perhaps you want to make specific gifts to your family, friends, or even a nominated charity.

If you pass without a will, this means you will pass intestate and the assets that form the whole of your estate will be dealt with under the statutory rules of intestacy found under Part 3A of the Administration and Probate Act 1919 (SA). The rules of intestacy leave no consideration for personal wishes and follow a strict statutory order for the administration of your belongings.

What Forms My Estate?

If you were to pass, everything you own would form part of your estate. This can include:

- Real estate (*subject to how you hold the property);
- Home contents;
- Money held in bank accounts;
- Investments;
- Shares;
- Motor vehicles;
- Jewellery; and
- Any other possessions.

*Any assets that are jointly owned will not form part of your estate and will pass to the joint owner.

This is an important consideration if you own real property (such as a house or investment property). If you own real property as joint tenants, your part of the property will pass to the surviving owner (this cannot be changed by a will). If however, you own property as tenants in common, you are free to distribute your part of the property under your will.

It is also important to note that superannuation might not form part of your estate, depending on whether you have a valid binding nomination as at the date of death.

What Sort of Demands Does the Statutory Order Impose if I Passed Intestate?

As already stated, the rules of intestacy leave no room for personal wishes and follow a statutory order for dealing with a deceased's personal effects. The rules of intestacy can sometimes result in brutally unfair outcomes without the consideration of your wishes.

Some of the examples of how an estate might be distributed when a person dies without a valid will are as follows:

I have a spouse or domestic partner at the time of my death
My whole estate will pass to my spouse or domestic partner. If my estate is worth less than $100,000, my spouse or domestic partner will be entitled to the whole of my estate including all of my personal belongings.

I have a spouse or domestic partner and children at the time of my death
If my estate is worth more than $100,000, my spouse or domestic partner will be entitled to the sum of $100,000, half of the balance of my estate, plus my personal belongings. My children will be entitled to the balance of my estate in equal shares.

I have only children at the time of my death
If only my children survive me, my children will have equal shares in my estate.

Who Can be Considered My 'Domestic Partner'?

Just because you're not married does not mean that your partner will not be entitled to your estate.

A domestic partner is defined as:

- A person who was in a registered relationship with you under the Relationships Register Act 2016 (SA) at the date of your death; or
- Someone declared to have been your domestic partner under the Family Relationships Act 1975 (SA) at the date of your death.

This means that anyone living with you in a close personal relationship for a period totalling three years, or if a child has been born from the relationship, can be considered your domestic partner.

The Court also has the authority to declare someone your domestic partner if the interests of justice require. In making this declaration, the Court can consider:

- The duration of your relationship;
- The nature and extent of your common residence;
- The degree of financial dependence for financial support;
- The ownership and acquisition of your property;
- The degree of mutual commitment and shared life;
- The care and support of children;
- The performance of household duties; and
- The reputation and public aspect of your relationship.

If you would like to leave your assets to people of your choosing and not left to the rules of intestacy, it is important to consider making a will to ensure your wishes are carried out.

If you are thinking of making a will or don't know where to start, the team at Andersons can talk you through the process. Contact the **Wills and Estates team** at Anderson Solicitors for a consultation and advice.

> If you die without a will, your estate will be dealt with under the statutory rules of intestacy, which leave no consideration for personal wishes.

This blog has been written by Lynn Pham.

The information in this article is general in nature and was accurate at the time of publication. Laws and circumstances can change. For advice specific to your situation, please seek professional legal advice.