



and decisions)

# YOUR FREE ESSENTIAL GUIDE TO ESTATE PLANNING



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## What is an Estate Plan?

An Estate Plan involves formalising your wishes both medically and financially to ensure you are covered in the event of death or incapacity.

Although not the only document that forms part of an Estate Plan, a very important part of your Estate Plan is a Will. A Will is a legal document that is a statement of your wishes that are to be executed when you pass away. When you write a Will, you appoint an executor who will oversee the processes of distributing your estate in line with your wishes.

## Why do I need a Will?

A person who dies without a Will is said to have died “intestate”. The assets of a person who has died intestate are distributed according to a prescribed formula set by law. This formula is rigid and is enforced by the Supreme Court in NSW.

The assets you leave behind can hold both financial and sentimental value, and you may want specific items to be inherited by a certain family member or friend.

### Things to consider:

- What members of your family would you like to receive your assets?
- Are you in a defacto relationship?
- Are there children involved?
- Do you want to allocate an inheritance to children from previous relationships?

All of these things will impact who gets your assets. If you don't state your wishes, then your assets may end up in the wrong hands. This can also cause emotional and financial stress for your loved ones when they are already grieving your loss.

## What is the formula for the distribution of my assets?

The order of inheritance generally runs as follows:

1. Spouse
2. Children, Grandchildren, Great Grandchildren
3. Parents
4. Sisters and Brothers
5. Grandparents
6. Uncles and Aunties
7. Cousins



## What are the consequences of dying without a Will?

- In addition to the rigid order of inheritance, dying without a Will can also have some other unintended consequences including:
- A relative or next of kin will need to apply to take up administration of the deceased's estate (this role is known as the executor under a Will). The Court has strict requirements on who can apply to be the administrator and it can place an unintended burden on family members.
- The person applying for administration of the deceased estate will need to prove to the court that the deceased did not leave a Will. This may seem like an easy task, however the court will require evidence of attempts to search for a Will including writing to banks and local solicitors, which can become an administrative burden and may result in additional costs.
- The person applying for administration will need to show evidence that the deceased was not in a relationship at the time of their death. This again can be an administrative burden.

## Should I make my own will from a DIY Kit?

Unfortunately, we see first hand the expensive mess left behind when people attempt a DIY Will. Homemade Wills often cause significant delays in beneficiaries receiving their inheritance, drawn out expensive litigation and family disputes.

## How can a Solicitor help?

Your solicitor can:

- Make sure your Will is valid and that it is properly drawn up, signed and witnessed
- Advise you on how to provide for your spouse or defacto partner, children and other dependents. They will also let you know about your rights and obligations to former partners and others
- Advise you on tax planning, including the best way to minimise any potential capital gains tax from the gifts you are making
- Give you a thorough understanding of the role of your executor and trustee and help you choose appropriate ones
- Advise you on the best way to arrange your estate
- If you have worldwide assets, give you advice on International Wills
- Advise you on assets that you control but will not form part of your estate
- Store your Will in a safe place so that your beneficiaries always know where it is kept.



## What else is included in an Estate Plan?

A basic estate plan should have 3 essential documents including:

- Will
- Power of Attorney
- Enduring Guardianship

A Will covers your assets in the event of your death, whereas the Power of Attorney and Enduring Guardianship cover your affairs in the event of your incapacity. All three documents are equally as important given they cover off on different scenarios.

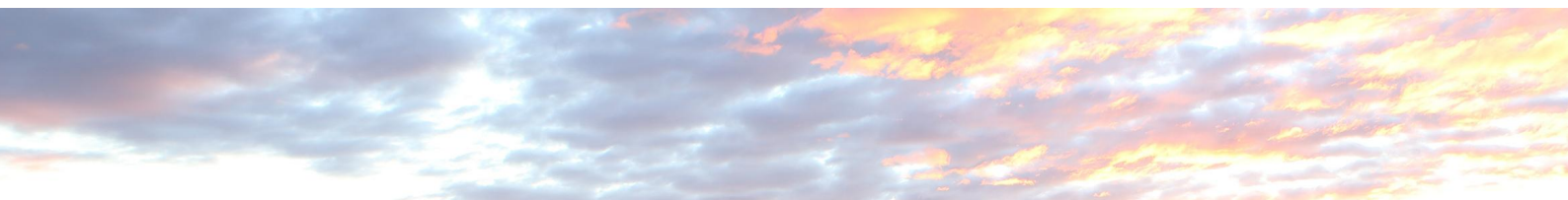
## Power of Attorney (Legal & Financial decisions)

An Attorney deals with the legal and financial affairs on behalf of the person that grants the Power of Attorney (the Principal). An Enduring Power of Attorney will continue to be effective even after you lose capacity.

The Principal can elect to have the Attorney act immediately (i.e. before they lose capacity) or only once a medical practitioner considers they are unable to manage their own affairs.

This is an important document to have in place as without it no one is able to manage your money and assets on your behalf if you lose capacity.

If you do not have a Power of Attorney in place and you lose capacity, a close relative or friend may apply to the Guardianship Tribunal to become your financial manager. This process is costly and time consuming and can be avoided by simply putting in place a Power of Attorney while you are mentally capable.





## Enduring Guardianship (Medical & Lifestyle decisions)

An Enduring Guardian deals with the medical and lifestyle affairs on behalf of the person that grants the Enduring Guardian (the Principal), once that person becomes partially or totally incapable of managing their own affairs. This includes where they live, health care that they receive, dealing with doctors etc. This power will only operate if you become partially or totally incapacitated.

This is an important document to have in place as without it no one is able to make medical and lifestyle decisions on your behalf if you lose capacity.

If you do not have an Enduring Guardianship in place and you lose capacity, a close relative or friend may apply to the Guardianship Tribunal to become your guardian. This is a similar process to an application for financial manager as discussed above. As such, the time and costs of this process can be avoided by simply putting in place an Enduring Guardianship while you are mentally capable.

## How long will it take to draw up my Estate Plan?

For the average Australian creating an Estate Plan is a relatively straight forward process.

At Southern Waters we aim to make this process simplified you so you can easily understand the contents and importance of your estate planning documents.

We have a team of experienced estate planning solicitors who can assist you with preparing an Estate Plan that suits your personal circumstances. If you would like to discuss your circumstances please do not hesitate to contact our office



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