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Estate planning and wealth

21 July 2020

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Ensuring you have an up-to-date and valid will is a central tenet of good financial planning, so it's a little surprising that almost half¹ of Australians don't have one.

But how many of those without a will know what actually happens to their investments after they pass away?

When you die without a will you are said to have died 'intestate', a legal term that simply means without a will. The situation where a person has died without a will is called 'intestacy'. It's even possible to die 'partially' intestate, meaning you have a will that only deals with part of your estate. In that case, the bits left over after your will has been dealt with come under intestacy laws.

Unfortunately, despite the fact our federation is more than a century old, the rules surrounding intestacy differ from state to state. But at their core, their intent has remained unchanged since ancient times—to pass on assets to successors based on an agreed hierarchy of family relationships.

Generally, the closest family relationship is the spouse and that's where the intestacy rules look first. If the deceased has no spouse, the children inherit the assets.

If you die without a spouse or children to inherit your assets, a series of rules are followed until an heir is found. First, the administrator looks for parents, then siblings, then grandparents and then various aunts and uncles depending on the state. Finally, if no-one can be found, your assets will go to the government.²

Things get complicated when there are children from multiple relationships or more than one spouse—which is possible if the deceased is in a de facto relationship while married. In those cases, assets start getting split up according to fixed formulas.

It's tempting to think that with one spouse and children from that relationship only, your family will get your assets when you die anyway, so why go to the trouble of making a will?

One problem is the trouble and expense of administering the estate. Leaving your spouse and children with the uncertainty of having to follow fixed statutory formulas can take time and become emotionally taxing on the family.

In more complicated families or families with adult children and grandchildren, leaving no will can lead to conflict and even fallouts between relatives.

And in some cases, you may want to leave a bequest to charity or a friend. This cannot normally be done under the intestacy rules.

Remember that while a will deals with your home, your investments and the other assets you own, it cannot deal with your superannuation, which is held in trust for your retirement and must be passed on after death in very specific ways under the law.

There is some good news amid all this complexity: unlike many countries, there are no taxes on inheritance or estates in Australia. There can be tax implications in passing on super, and capital gains tax applies as usual when an asset is sold, but Australia abolished death duties in 1979. Under Australian tax law, the people who receive your assets when you're gone generally receive them without an immediate tax bill.

And there are some clever things that a good estate plan can achieve, including the establishment of a testamentary trust, which is a trust that can look after your assets for you after you die.³

A testamentary trust lets you hold off children getting access to assets until they are a certain age or reach a life stage like getting married or completing university. It

can also protect beneficiaries that might not be capable of making good financial decisions and stop your assets being caught up in a divorce or a bankruptcy among your beneficiaries.

Going through the process of creating a valid will and keeping it up to date ensures the investment wealth you spent your life accumulating passes on to the people and charities you want to have it.

The process is not difficult although it's best done with professional advice. But it's a small price to pay for peace of mind.

1. <https://www.tag.nsw.gov.au/wills-faqs.html>
2. https://www.lawaccess.nsw.gov.au/Pages/representing/after_someone_dies/applying_for_letters_of_administration/entitlements_under_intestacy.aspx
3. <https://moneysmart.gov.au/wills-and-powers-of-attorney>



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