

## Things to think about before preparing your Will:

It's a good idea to think about your Will before our appointment, so you have a clear idea of what you want to say.

Here are some of the areas you might like to think about.

□ How do you want your estate divided?

You should not attempt to deal with each particular asset in your Will. This is because you cannot know now what assets you will have when you die. You should picture your estate as a *pool of assets* which may include real estate, cash, investments, insurance proceeds etc.

Regardless of how your estate is made up you need to decide how your estate is to be divided into *shares, portions or percentages* amongst your family and loved ones.

The way you will divide your estate will generally depend on what relationships you have. Some examples follow:

- You are married with children of the marriage - *All to spouse, then to children, then to grandchildren.*
- You have no spouse and have children – *Divide all equally between our surviving children and then on to grandchildren.*
- You have a spouse but no children (yet) - *All to spouse, then to children (if any) but if no children then ½ to our family and other ½ to spouses family.*
- You have a spouse and each of you have children from prior relationships – *You give a life interest to our spouse in the family home, and upon his or her death, our ½ of the family home goes to our children. (it may be necessary to alter the title to the family home to tenants in common).*
- You have no spouse and no children – *All to parents, then to siblings then to nephews and nieces.*

□ Who will be your executor ?

Generally, the primary beneficiary will be your executor. You can also appoint a backup executor if the primary executor is unable to act.

- You can appoint Haynes Leeuwin Barristers and Solicitors as your executor if you wish - but *the solicitor won't talk you into it.* In fact, we suggest that you first consider family or friends.
- If you want Haynes Leeuwin Barristers and Solicitors to administer a deceased estate the charges are generally less than half the rate charged by the *Trustee Companies.*
- If your executor needs professional help he or she can turn to us for assistance in administering the estate.

□ Do you have a Business ?

If you have a business, you can include the business in your Will if you *personally* own the assets used in the business. You would personally own the business assets if the business was carried on as a sole trader or in a partnership. If a company or trust carries on the business then you will not own the business assets personally. Instead you may own the shares in the company which you can include in your Will.

If you have a trust the *control* of the trust assets needs to change upon your death. This can often be detailed in the Will or in the trust deed.

□ Guardianship

- You can appoint a legal guardian of your children in your Will.
- Where both biological parents die, the final decision as to who will be the guardian of your children rests with the *Guardianship & Administration Board*. In making its decision, the *Board* will take into account the guardian you have mentioned in our Will.
- You should avoid appointing joint guardians in case they divorce or separate.

□ Funeral Arrangements & Organ Donation

You can make an election to be *buried* or *cremated*. You can also direct that your organs and body tissue be made available for transplantation and/or research purposes.

**Enduring Power of Attorney**

You may also wish to have an ***Enduring Power of Attorney*** prepared during the appointment. This is a very important document for anyone who owns real estate or has investments in their name, alone or jointly with another person.

If you suffer a trauma such as stroke, heart attack or coma (say from a car accident), your real estate and other assets you own will become frozen during the period of your incapacity. This raises significant legal problems. For example, if your partner had a heart attack or stroke you could not sell or mortgage the family home – because your partner (who is now incapacitated) cannot sign legal documents like a transfer or mortgage. You would need to obtain a Court order before these documents could be signed and accepted by the Department of Land.

By executing an ***Enduring Power of Attorney*** these problems disappear and your attorney can do anything you can legally do.

**Enduring Power of Guardianship**

You may also wish to have an ***Enduring Power of Guardianship*** prepared during the appointment. An ***Enduring Power of Guardianship*** is a legal document that gives someone the legal authority to make personal, lifestyle or treatment decisions on your behalf any time that you are unable to make reasonable judgments relating to your person.

In most instances, having an Enduring Power of Guardianship in place will alleviate the need for the State Administrative Tribunal to be involved.