HAYNES LEEUWIN
WILLS & ESTATE LAWYERS

Things to think about before preparing your Will:

It is 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 include:

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

Who will be your executor?

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

You can appoint Haynes Leeuwin Wills & Estate Lawyers 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 Wills & Estate Lawyers 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 testamentary guardian for your children in your Will. The appointment of such a guardian only becomes effective upon the death of the last surviving parent or legal guardian.

The testamentary guardian is responsible for making long term decisions regarding the welfare and development, and has the daily care, of the child. However, a testamentary guardian is not obligated to accept the appointment to serve as a guardian to the child.

If you do not appoint a guardian or guardianship is contested, an application could be made to the Family Court of Western Australia. The Court would take into account the wishes expressed in the Will as part of the decision regarding the best interests of the child.

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 a stroke or heart attack and are left incapacitated (for example, you are in a coma following a car accident), your real estate and other assets you own will become inaccessible during the period of your incapacity. This raises significant legal problems. For example, if your partner suffers a stroke and is left incapacitated, you could not sell or mortgage the family home, because your partner (who is now incapacitated) cannot sign legal documents, such as a transfer or mortgage. You would need to obtain an Order from the State Administrative Tribunal before these documents could be signed and lodged by Landgate.

By executing an Enduring Power of Attorney these issues would not exist 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.