

# **Wills & Estates**

A solicitor can help you with many different aspects of estate planning. For instance, solicitors can provide advice on succession planning, powers of attorney, enduring guardians, advance health care directives, wills and claims against estates.

## **Succession Planning**

Solicitors can also give advice on how to structure your assets and affairs while you are still alive so that you will minimise taxes, fees and costs payable by your estate. Succession planning is the manner in which the assets you have at the time of your death are passed on to your spouse, children and other beneficiaries in a manner that best preserves the value of your assets. Solicitors can also provide suggestions on how to structure your affairs to reduce the possibility of family disputes, or provide advice on establishing a trust.

## **Power of Attorney**

A power of attorney is a document that gives someone else the power to manage your financial affairs while you are still alive. That person is called your attorney. An attorney is different from appointing someone to be an executor under your will because executors only have responsibility for administering your estate after you die.

It is a good idea to have a power of attorney in the event that you lose your mental capacity to manage your affairs while you are still alive. It can also be a convenient way of managing your affairs if you frequently travel overseas or are ill and find it difficult to carry out your transactions in person. Signing a power of attorney does not mean that you give away your right to manage your financial affairs and you can continue to carry out transactions yourself provided that you have the mental capacity to do so.

## **Enduring Guardians**

Because a power of attorney only deals with the management of your financial affairs, it is also a good idea to appoint an “enduring guardian”. An enduring guardian is someone you appoint to make personal, health or lifestyle decisions. You can only appoint an enduring guardian while you have the mental capacity to do so, but this appointment only takes effect in the event that you lose capacity.

## **Advance Health Care Directives**

A solicitor can also provide advice about advance health care directives which allow you to provide clear guidance to your doctors about your intentions for medical treatment in the future.

## **Wills**

One of the most important elements of estate planning is having a will. A will is a very important written document in which someone directs how their assets will be distributed after their death. Someone who writes a will is called a testator.

In general, you have to be over the age of 18 can make a will although in some cases minors can also make a will. However, people can only make a will if they have the mental capacity to understand the nature of what they are doing. This can be particularly important in the case of seniors whose mental capacity may be diminished. In some cases, it might be too late for someone to make a will.

There are many advantages to making a will. Generally, if you have a will your estate will be administered more quickly, cheaply and efficiently than if you die without one. Making a will gives you the ability to choose the executor of your estate. This is the person who will be responsible for administering your estate until all of your assets have been distributed to their beneficiaries. It also gives parents the opportunity to express their wishes about how their children are to be cared for.

If you die “intestate” (that is, without a will), your assets will be divided and distributed according to state laws. This could mean that the people who benefit from your estate might not be those you would have chosen yourself. Also, if you have no direct relatives, your assets might pass to the Crown. A solicitor can help you draw up a will to ensure that your wishes will be complied with after you die.

It is very important to obtain the assistance of a solicitor when drafting a will in order to ensure that your intentions will actually be given effect after you die. Among other things, a solicitor will ensure that there is compliance with all of the legislative requirements for preparing a valid will, and that the will is properly drafted. If a will is not properly drafted, certain gifts may fail and the testator’s intentions can be frustrated.

In addition, a solicitor can also provide valuable advice about the possibility of claims under the Family Provision Act 1982 (NSW). This legislation allows some persons (usually current or former spouses, de facto spouses, children or step children) to make a claim against the deceased person’s estate where they believe that they were not adequately provided for in the deceased’s will. In this manner a solicitor can help minimise the possibility and effect of claims being made against the estate.