

Macquarie Law

Peace of mind

Directions for family, executor/s and trustee/s

It is difficult to think about death, particularly our own, but as they say, “the only certainties in life are death and taxes”. There is no such thing as bad luck because you are organised for death. On the contrary, some forward planning can result in a great deal less stress and uncertainty for our families.

When making a will it is also possible to leave some directions for your executors and trustees. Following are some of the things that you might consider to leave directions about. These could be handwritten or typed notes signed and dated by you. Keep a copy of your directions with a copy of your will at home. Also give a copy of your directions to me to store with the original will and any other important documents that I hold for you.

It is a good idea to talk to your family about your will and the directions that you want to give to them. Your family will then know what you want to happen. This can save arguments when family is grieving after you have passed on.

Medical treatment

- What are your views about your health care and life being sustained by artificial means?
- Would you like to donate your organs and/or tissues to save lives?
- Do you need to appoint guardian/s in the event you are too unwell to give instructions to your medical practitioners and there is no next of kin available for medical staff to talk to.

Funeral

- Are you a member of a funeral fund? Do you have a burial plot or funeral prepaid?
- What funeral arrangements would you like? Where would you like to funeral to take place?
- Would you like a church service and/or graveside service?
- Do you prefer to be buried or cremated? Where would you like to be buried or interned?

Distribution of gifts

- Bear in mind that it is often a good idea to give some things away during your life. Are there some gifts that you could make now and see the gratitude of the beneficiary during you life?
- Although your estate may be left in equal shares to beneficiaries can you give your executor any guide as to how to distribute various individual items?
- Should sentimental or historical items or collections go to particular family members?
- Are there any things in your possession that do not belong to you?

Administration of estate

- Where will your executor find your important documents and financial records?
- Recommend to your executor and trustee that they seek advice about what they should do.
- Ask you trustee to invest conservatively, if need be.
- Do you want your executor and trustee to allow auction sales of your property?
- Do you have any business interests? If so, these should be part of a plan for sale or succession.
- Do you have any assets that your executor may not be aware of? For example, shares, a business interest, artworks, patents, trademarks, outstanding loans or assets held elsewhere.

- Do you own any items that have a special value? If so, how should they best be handled or sold?
- What about memberships, email accounts, online services & passwords, websites, domain names and social networking sites?

Carers for infant children (if any)

- Testamentary guardians of your young children can be appointed in your will but it is not always necessary.
- Would you like to leave any advice or instructions for your executor, trustee or guardian about raising your young children?
- Do you think boarding school may be an option?
- Do you want to leave instructions about any trust for the maintenance and advancement of your children?

Enduring power of attorney

An attorney properly appointed can do most financial things that you can do. An enduring power of attorney operates only during your life but importantly it operates even after you have lost capacity. A power of attorney can operate from the time that it is signed, that is, immediately. It is very important to have a power of attorney in the event that we become incapacitated. That may never happen. Hopefully, it does not, but if a power of attorney is not in place beforehand it may not be possible to put it in place after you lose capacity. Sometimes people appoint attorneys to act for them while they are travelling overseas or just for a particular transaction.

Enduring guardian

The appointment of an enduring guardian only operates during your life but unlike a power of attorney it only comes into effect when you become incapacitated. That is because a guardian makes decisions about your health, care and accommodation, which is not necessary for the guardian to do if you have the capacity to do it for yourself. The appointment of a guardian is very important if you do not have immediate family that medical staff can speak to in the event of your incapacity. Consider giving your guardian directions to refuse or withdraw consent to medical treatments and life support for you.

Costs

There are legal costs involved with the preparation of wills, powers of attorney and the appointment of guardians. You do not incur costs if you prepare your own instructions for your executors, trustees or guardians. Making a will that is likely to last you for a long time and allows for a few different contingencies can also save costs.

Ask for an estimate of the costs for preparing a will or whatever you need. Most legal work can be undertaken in stages. You definitely need a will but if you are young you may decide to put off making a power of attorney for a while. You may never have the need to appoint a guardian. Do keep in mind the costs that can be incurred by your estate and family if you are not organised.

All of these things are matters that you can talk to me about. Then after some discussion we can work out the best way for you to proceed, so that you will be prepared.