

## ESTATE PLANNING FAQs

### *What is a Will?*

A Will is a written legal document that operates upon your death. It states who is to receive your property when you die. Assets can include residential or commercial property, bank accounts, cash money, motor vehicles and personal items.

Your Will may also appoint a guardian for any children you have who are under 18 years of age.

### *What is an Executor?*

An Executor is the person/people who you specify in your Will to control your property after you die. This person/people will be entrusted with distributing your property, as you have described in your Will. You can appoint more than one Executor, if you like, and have them carry out their obligations together.

### *What if I die without a Will?*

If you don't have a valid Will, you are said to have died "intestate". Your assets will be distributed according to the formula set out in the law. You will not get to choose who is responsible for managing your assets after death or to whom your assets are distributed. There is a risk that you may not agree with how the law deems your property to be distributed and therefore, your property will be gifted to people not of your choosing.

### *Can I make a Will myself or should I have a lawyer make it for me?*

A Will is your only method of communicating your wishes after your death. Therefore, it needs to be carefully drafted by a Lawyer, so as to ensure your wishes are properly documented and valid. Some risks that may arise if you don't have a properly prepared Will (by a lawyer):

- The court may deem it invalid if it does not comply with the strict requirements of the Wills Act (eg – improperly signed and witnessed);
- The executor named has died and there is no substitute executor;
- The names of executors or beneficiaries being incomplete leading to confusion and subsequent delay;

- The Will-maker not having disposed of all of their estate, therefore leading to a partial intestacy (which means the undisposed part of your estate will be treated as if you don't have a Will at all); and
- The testator gifting property that they don't legally own, and therefore, not capable of being gifted, leaving that beneficiary with potentially nothing.

### ***Where should I keep my original Will?***

Your original Will should be kept in a safe place where it cannot be damaged or tampered with. It is a good idea to either give a copy to your Executor, or let your Executor know where you have placed the original Will.

At Georgiadis Lawyers, if we have prepared your Will, we offer you the option of storing it in our Deeds room, located at our Adelaide site. Our Deeds room is secure and fireproof. This service is free of charge to you.

### ***What is an Enduring Power of Attorney?***

An Enduring Power of Attorney (EPOA) is a legal document that gives another person the power to make financial decisions on your behalf. This includes, buying and selling property, accessing all your bank accounts and voting at meetings.

This document operates only whilst alive, and can either be effective immediately upon execution, or only when you are unable to manage your own financial affairs (eg-by reason of an accident or illness);

### ***What if I don't have an Enduring Power of Attorney?***

If you don't have an EPOA the Guardianship Board may have to appoint a financial manager to make these decisions for you. The person or organisation appointed as your financial administrator will not necessarily be who you would have chosen. This may be stressful for those involved and can cause considerable conflict and anguish among family and friends concerning who is appointed to make decisions on your behalf.

### ***Who can I appoint as my Enduring Power of Attorney?***

You can appoint anyone aged over 18 to be your Attorney. We recommend that this person be someone you can trust entirely, to act in your best interests at all times. Ideally, we recommend you choose a trusted friend or relative who is capable of handling financial matters and knows your affairs.

### ***What is an Advance Care Directive?***

An Advance Care Directive ("ACD") is a new document, which recently came in to effect on 1 July 2014. It allows you to:

- Write down your wishes, preferences and instructions for your future health care, end of life, living arrangements and personal matters; and/or
- Appoint one or more Substitute Decision-Makers to make these decisions on your behalf, if you are unable to make them for yourself.

It replaces the following documents:

- Enduring Power of Guardianship;
- Medical Power of Attorney; and
- Anticipatory Direction.

Don't worry if you have one of these documents already executed, it will remain effective, unless you subsequently execute an ACD.

### **Disclaimer**

*The information in this article is not to be relied upon for the purposes of legal advice. It is general information only. If you require specific legal advice in relation to your matter, please call Georgiadis Lawyers on 8231 5255 to make an appointment.*