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New year, new Will: Estate planning tips for 2016

New year financial resolutions are common at this time of year, but one overlooked yet important action to take is to sort out Wills and estate plans, says Anna Hacker, National Manager – Estate Planning at Equity Trustees.

“A fresh new year may seem like a strange time to be thinking about Wills, but it’s actually a good time to tick this item off your ‘To Do’ list.

“If you don’t yet have a Will, then it’s a good time to get it sorted. It’s not something that can continually be put off for “one day” – unfortunately no-one knows precisely when an estate plan will be needed therefore doing it now is the only sensible option.

“It doesn’t matter how rich you are or even how young you are - anyone who has children, is a member of a superannuation fund or who owns their own home should have an estate plan. Choosing to do nothing is something that your loved ones may end up regretting in the future.

“If you do have a Will, even if it just a few years’ old, now is a good time to reflect on the last 12 months and what may have changed in your life.

“A new asset, a new relationship, a new child or grandchild, or a death in the family, means that your Will probably needs to be updated.

“For instance, getting married may revoke parts of an existing Will, but getting divorced may revoke it in its entirety. Anyone who wants control over where their assets end up – which is most of us – needs to ensure their Will is accurate and up-to-date.

“De facto relationships also need to be considered – a recent court case in West Australia highlights the confusion that exists legally around whether the ending of a de facto relationship should be treated the same as a divorce. To avoid such confusion, it’s much simpler to simply update the Will to reflect the changed relationship.

Ms Hacker added that government legislation has changed in some states in the last year, which could also affect existing Wills and Powers of Attorney.

“Unusually, there have been two major changes in the last 12 months to the legislation governing estate planning which could impact on a number of Wills and Powers of Attorney.

“One of the most significant is that in Victoria, the number of people who can challenge a Will has been reduced. While this is a positive move in most instances, it does mean that people who wrote their Will in a specific way to try to reduce the likelihood of a challenge, may find this is now redundant.

“For instance, adult children can now no longer challenge a Will in Victoria unless they are classified as financial dependents. So someone who wrote their Will leaving a bequest to an estranged child in the hope this would prevent them from challenging their Will, no longer needs to do so, and can instead leave that money elsewhere.

“The other major change, also in Victoria, consolidates the current enduring power of attorney

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(financial) and power of guardianship into one enduring power of attorney. Similar changes took place in New South Wales and South Australia. While this doesn't have to affect existing arrangements, some people may like to take the opportunity to simplify their power of attorney arrangements."

Ms Hacker said that while creating and managing an estate plan isn't as simple as the DIY Will kits or apps would like people to believe, it shouldn't be an overly stressful or time-consuming task either.

"Probably the main reason I hear for people putting off writing or updating their Will is that they think it will be too hard and take too long to do properly.

"While it does require care and fore-thought, simply being organised and talking to the right people will make the task much easier."

Some tips on getting started include:

- Make a list of all your assets – your tax returns and bank accounts will help with this
- Review any relationship changes that may have occurred in your family over the past year
- Work out who you want to leave something to (and who you don't want to leave anything to!). As part of this, think about who you may have responsibilities to – financially or otherwise
- Decide who to trust with responsibilities such as executor, attorney and guardian
- Compile other useful documents such as birth, marriage and divorce certificates, superannuation records, other investment records, insurance and mortgage deeds, and bank accounts.

Finally, choose an expert adviser who can guide you through the process and ask the "What if?" questions that need to be answered.

"Probably the most common reason for Wills to be challenged and overturned is that the person who made the Will didn't receive adequate professional advice and assistance in the first place. Taking the time now can help ensure a smooth process later for those left behind," Ms Hacker said.

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Equity Trustees was established in 1888 for the purpose of providing independent and impartial Trustee and Executor services to help families throughout Australia protect their wealth. As one of Australia's largest and oldest listed independent trustees, we offer a diverse range of services to individuals, families and corporate clients including aged care advice, asset management, estate planning and philanthropic services.

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