

Review your Will regularly to avoid accidental family drama, says Equity Trustees

It is often unintended but a Will created in the past – before grandkids, re-marriages, family disputes or upheavals, major investment or property acquisitions and even before retirement – can have all the ingredients for creating a costly family drama when you're gone.

"There is an unfortunate tendency for people, having written their Will, to put it in the bottom drawer and forget about it. This is a mistake, and the consequences can mean more problems than not having a Will at all," said Stephen Hardy, National Manager Estate Planning, Equity Trustees.

"The simple fact is that people's circumstances change, and their Wills have to change to reflect this. The most obvious example is the break-down of a marriage. If a Will has not changed to acknowledge this, then there is the possibility of the former partner having a legal say in how the Will is administered.

"I know of cases where marriages have ended acrimoniously, the divorce has not been finalised and the Will has not been changed to reflect this bitter breakdown, with the estranged partner still being the executor and sole beneficiary of the Will. In most States, even when a divorce is finalised, that does not mean the Will is necessarily revoked. The fact that a divorce does not automatically revoke a Will surprises many people.

"The structure of a family, and changing dependents, can require a Will to be changed. The birth of new grandchildren, arrival of stepchildren or half-siblings could require a rewording of a Will to ensure everyone is treated appropriately. Another possibility is the development of chronic illness in a family member – physical or mental – or other issues which result in the family relationships, and needs, changing over time."

While those are personal relationship issues, other financial changes can also have an impact; major acquisitions or losses, including inheritance or insurance payouts, business dealings and investments, employment entitlements and superannuation arrangements.

Mr Hardy suggests Wills should be reviewed about every three years, although obviously this should be brought forward when there is a major change in family or financial circumstances.

"It doesn't have to be a demanding process, and it could save your family distress and a legal bill of thousands of dollars – well in excess of the money you would spend on a review.

"In my experience, it's often the case when a Will doesn't get changed to reflect new family circumstances that it can lead to costly court cases when an aggrieved party feels they have been poorly treated. Updating a Will can often mean this problem is avoided."

Five key things to consider:

1. Changes in circumstances – the people in your life, and the assets you have
2. Your executor – people often nominate their spouse or a trusted friend around their age, but will it be feasible if they become older or ill? Can they manage the responsibility?
3. Your super – check your binding death benefit nomination (including when it needs to be renewed) and other arrangements because a Will and your super will not automatically work together and tax outcomes can be vastly different
4. Any special arrangements needed to protect the inheritance of a vulnerable member of your family, for example someone with special medical needs.
5. Capital gains tax: If you own assets that have unrealised capital gains, it's important that capital gains tax consequences are managed appropriately through the estate administration process. This is often overlooked and can have a very big impact on your tax liability.

“These are common points for many when it comes to Wills – but everyone is different. There is nothing surer in life than things changing. Don’t wait for a stressful period in your life to do it – get reviews on a regular basis with professional advice to make sure your Will does what you intend it to,” Mr Hardy concluded.

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 asset management, estate planning, philanthropic services and Responsible Entity (RE) services for external Fund Managers.

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Media inquiries:

Alicia Kokocinski
Senior Manager – Marketing & Communications
03 8623 5396 / 0403 172 024
akokocinski@eqt.com.au