



MORROW PETERSEN  
SOLICITORS

### ***Important Things to Know When Drawing up a will***

Our firm accepts instructions in all areas of wills and estates. Most people recognise the wisdom of having their will professionally drafted. Homemade wills often prove troublesome even when prepared with the aid of a pre-printed form available with some law stationers. A mistake in drafting may be impossible to correct and at best may only be corrected through the intervention of the Supreme Court.

#### **The encouragement that a solicitor gives to a client to make a will and to keep it up to date has a number of bases:**

- Even though a client's estate may be small, circumstances such as an unexpected benefit under a will or other windfall, can result in a sudden increase in its size and make it desirable that its disposable be provided for.
- The same considerations apply above when all assets of a client are currently held as a joint tenant. Additionally, the client may turn out to be the surviving joint tenant.
- It is desirable for a client to take advantage of the opportunity to nominate who will take charge of his or her affairs on death by appointing an executor.
- Unless a will is made the manner in which your estate is disposed of is determined by the rules of intestacy. These rules frequently do not accord with what you may wish. Even if you have considered the rules of intestacy you may not have interpreted their application accurately.
- A client, having an understanding of his or her family situation, is able to provide for the family through a will in a way it is most appropriate.
- In many circumstances, the way in which a will has been made, results in considerable savings in the administration of the estate.
- Consideration for those left behind and the matters referred to above should outweigh any apprehension you may have about contemplating provisions to apply in the event of death.

In practice the preparation of a will frequently involves more than preparation of the document itself. Often you may take the opportunity to review your affairs generally and in our opinion it is appropriate and desirable for a Solicitor to direct your mind to other matters which properly arise in the context of taking your instructions to draft a will.

With the abolition of death duties from the Australian scene, "estate planning" is now a matter of seeking to simplify the administration of an estate and in some instances to ensure that your affairs are planned to take into account the relevant taxation laws. Capital gains tax is likely to require special attention in this context.

In appropriate cases and where your affairs have not received any recent professional advice from a taxation point of view, when drafting your will we are likely to recommend that such advice be sought from your taxation advisor.

#### **Some matters that may simplify the administration of an estate are as follows:**

- Minimizing jurisdictions in which your assets are held;
- Life insurance;
- An admission of age in respect to life policies;
- Superannuation implications;
- Intervivos trusts and Will substitutes;
- Private company for public company shareholdings;
- Trustee arrangements;
- A sole proprietor of a business;
- Records and details of important information.

In respect of the administration of estates we advise personal representatives of their role. Traditionally the personal representatives duties are as follows –

- To reduce the estate of the deceased into possession;
- To pay the debts of the deceased;
- To distribute the residue after payment of debts and expenses of administration to those beneficially entitled under the Will or intestacy rules.

The practical implications of the above duties need to be considered carefully. Additional duties may arise depending on the circumstances of the estate.

Please contact any solicitor at our office, [morrow@law.com.au](mailto:morrow@law.com.au) if you would like to discuss your affairs generally which may include the making of a Will, estate planning and the use of Powers of Attorney under the *Powers of Attorney Act 1998*.