

INSTRUCTION SHEET FOR WILLS – GENERAL ADVICE

1. A Will is an essential part of a financial plan. The purpose of the Will is to make a written legal statement to clarify what you would like to happen to your assets after your death. In essence therefore estate planning involves the organisation of a persons financial affairs in anticipation of death in order to ensure that your assets are distributed to your intended beneficiaries in an orderly and tax effective manner.
2. In order to ensure the appropriate Will is drafted and finalised on your behalf there is certain elements and terms used in the Will that you need to be aware of to provide details. The key terms are as follows:

Testator/Testatrix: The Testator (male version) or Testatrix (female version) is the person who is making and signing the Will and is leaving a deceased estate to beneficiaries. It is important on the instruction form to list your full name, address, occupation and date of birth as you are the Testator or Testatrix of the Will.

Executor (male version) / Executrix (female version): An Executor/Executrix deals with the assets of the person's estate when a person passes away. This generally involves:

- (a) Collection of the estate assets;
- (b) Paying any debts (including income tax); and
- (c) Distributing the estate assets between the people who are entitled to the estate, in essence in accordance with the persons Will.

It is important to appoint an Executor who is reliable, honest, capable of dealing with professional advisers and who will have the interests of the beneficiaries at heart. There are different forms of Executors, namely the Public Trustee, a professional trustee company, or individuals that you know being either your family, friends or a professional adviser. With respect to the Executor it is also prudent to nominate either a co Executor or an Executor/Executrix who will carry out the Executor role in the event that the initial Executor or Executrix appointed has predeceased you or is unable to act (eg. because the Executor has Alzheimers) or is unwilling to act (the Executor merely does not wish to carry out the role). You must specify on the instruction sheet the full name, address and occupation of the Executor, any co-Executors or alternate Executors.

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Deceased's Estate: The Deceased's Estate is the assets and property of a person who has died. Therefore it is important that you clearly list all the assets that are in your name or are held jointly with another person. In order to assist you the instruction sheet asks you to detail in writing the assets of your estate such as real property, superannuation, shares and life insurance policies. It is beneficial to be as detailed as possible. You should also clearly list the liabilities against the particular asset. For example your residential home is an asset of your estate. Therefore you need to specify the address of the property and who holds the property whether you hold the property in your own name or with some other party jointly. You must also specify if there is any encumbrances such as a mortgage registered against the property. It is important to detail the assets and liabilities and I will advise you as to whether the assets fall as part of your estate. Generally you should note the following assets which typically may not fall as part of your estate but of which details should be provided so advice can be given as to how they are to be dealt with. These assets include the following:

(1) Superannuation Assets:

Superannuation benefits payable in the event of death of the member will not generally form part of the estate. This is because the trustee of the superannuation fund owns the assets and the deceased member is not entitled to payment of the death benefit, that is the deceased member does not own the proceeds. The requirement that the trustee pay a benefit (if any) is governed by the Trust Deed and the Superannuation Industry Supervision Laws. In essence most superannuation funds will in the event that the deceased has dependants pay the death benefits to dependents. The trustee of the superannuation fund will usually consider any binding death nomination form. It is important to note whether you have a binding death nomination form. The nomination form usually must specify a dependant and must be updated every three years. If there are no dependants then it is usual that the trustee of the superannuation fund will pay the death benefits to the estate. However it is important to note that when a person passes away the superannuation death benefits do not automatically fall as part of the deceased's estate.

(2) Proceeds of Life Insurance Policies:

Similar to superannuation proceeds, life insurance policies (where the deceased was the life insured) generally do not automatically form part of the deceased's estate assets. The insurance provider is required to pay in accordance with the insurance agreement to the nominated recipient. It is only where the deceased or the deceased's legal personal representative is the nominated recipient that the proceeds would fall as part of the estate. Therefore when listing insurance policies please ensure that a copy of the insurance policy is provided or alternatively instruct as to who is the beneficiary of the insurance funds on the death of the life insured.

(3) Assets Held in Joint Names:

Property owned as joint tenants will not form part of the deceased's estate. This is because if you have a joint interest on your death the property will automatically pass to the other joint owner. Examples of joint ownership include your bank accounts and ownership of the family home as joint tenants between husband and wife. Therefore joint tenancy will automatically pass the asset to the surviving joint tenant regardless of the terms of your Will. However ownership as tenants in common differs from joint ownership, as each tenant in common owns a certain percentage of the property, which they can deal with, as they like. As such interest held, as tenants in common will be distributed in accordance with the Will.

(4) Assets of Company:

Assets held by a company are not owned by the shareholders. A company in law is a separate entity. Your estate will only include any shares they own in the company at the time of death. This is obviously subject to any restrictions in the company's constitution preventing disposal of those shares.

(5) Property Held in a Discretionary Family Trust (commonly known as a Family Trust):

If you do have a Family Trust then it is important that you provide me with a copy of the same prior to finalising your instructions for your Will. However you should note as with companies the assets of a trust are not owned by the beneficiaries but by the trustee of the Trust. If you are a beneficiary of a fixed Trust, that is where beneficiaries have fixed entitlements to income and capital of the trust that interest will generally form part of your estate (an example of a fixed trust is a Unit Trust). However if the trust is a non fixed trust (such as a Discretionary Trust) the beneficiary will usually not have an interest, which survives death. In any case the provisions of the Trust Deed of the trust will govern whether a beneficiary may give away their interest in their Will. It is important to note that the person who controls the Trust (usually defined as the Guardian or Appointor in the Trust Deed), need to be accounted for in your Will. Consequently if you are a Guardian and Appointor of a Family Trust then you need to provide for the appointment of an alternate Guardian and Appointor in the event of your death.

Beneficiary: A Beneficiary is a person who will receive all or part of a deceased's estate upon the Testator's death. It is important to consider the consequences if those Beneficiaries predecease you. Consequently in the instruction sheet you should list the full name, address, occupation and date of birth of each of the Beneficiaries. You should also specify the relationship of the Beneficiary to you (for example daughter, son). If you intend to leave out any Beneficiaries which are related to you such as spouses (including de facto spouses) and children then you should specify as to why you do not wish for them to take any property on

your death. With respect to minor Beneficiaries that is Beneficiaries under the age of 18 you should consider the appointment of a guardian, that is a person appointed to legally act on behalf of minor children under the age of 18 in the event that both parents pass away. A guardian may also be appointed where a deceased person is incapable of managing their financial affairs (e.g. a beneficiary who is intellectually impaired). If you appoint a guardian then you must clearly specify his/her full name, address, occupation and the relationship of the guardian to you.

The above general advice is to assist you with completion of the initial instructions for your Will. There is specific advice, which will pertain particularly to your facts. Specific advice will be conveyed to you with the draft Will.

PAULA MARTINO