



## Protect your estate from these mistakes

It's a sad but unavoidable fact: one day we are all going to die. You will most likely have clear ideas as to how you would like your hard-earned wealth – your 'estate' – to be divided amongst your loved ones or other beneficiaries. However, estate planning is a complex area of law and basic mistakes can see Wills declared invalid, money end up with unintended recipients, or benefits reduced by avoidable tax bills. So how can you avoid making some of these mistakes?

### **Make a Will**

Only around half of Australian adults have a valid Will. If you don't have one, make one. Otherwise your estate will be distributed according to a government formula, and if no beneficiaries can be identified your life's savings will end up in state government coffers.

If you do have a Will make sure you review it regularly and update as required. Just a few of the key events for revising your Will include entering or leaving a marriage or

de facto relationship, starting a family, establishing investment vehicles such as companies or trusts, changes to the financial or health status of adult beneficiaries or to add gifts to charities.

### **Appoint an appropriate executor**

Administering an estate can be a major undertaking. Ideally you will want an executor who is competent, organised, honest and unbiased. Often this will be a spouse who is also the sole beneficiary, and administration of the estate may be relatively straightforward. But it's common to also nominate an alternative executor should your spouse die before you. This may be an adult child or other close relative, and not necessarily a beneficiary. Whoever you nominate make sure you tell them that they are a (potential) executor and to provide them with important information such as the location of the original Will, and contact details for your lawyer, accountant and financial planner.

## Identify assets that may not be dealt with by your Will

Any assets that you jointly own automatically pass to the surviving owner(s) on your death. They are not subject to your Will.

If you have provided your super fund with a binding death benefit nomination your death benefit will be paid to the nominated beneficiary. This can be anyone, and not necessarily a beneficiary of your Will. If you nominate your 'personal legal representative' (i.e. your executor), the death benefit will be paid to the estate and dealt with according to your Will. If you don't make a binding nomination the trustees of your super fund are obliged to pay the benefit to your dependents, as defined by superannuation law. This may not coincide with your wishes.

## Be fair

If someone has reasonable grounds to believe they should receive something from your estate but you have not provided for them in your Will, then they may be able to legally challenge your Will. Legal fees may be paid by the estate, eroding its value, so you'll want to minimise the chances of the Will being contested.

Also be wary of 'ruling from the grave', for example by making any gifts dependent on a beneficiary either doing something (marrying a specific person, say), or not doing something.

## Get expert advice

Estate planning throws up many other traps for the unwary, from paying too much tax on a superannuation death benefit to not making provision for beneficiaries who are unable to adequately manage their own affairs. With so much at stake, it pays to consult a specialist estate planning lawyer.

### Sources:

*New research: more than half of Australians have no Will, many in the dark about what happens without a Will*  
(<https://www.mauriceblackburn.com.au/about/media-centre/media-statements/2019/new-research-more-than-half-of-australians-have-no-will/>)

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**nixon financial services pty ltd**  
corporate authorised representative

Gisborne Ph: (03) 5428 0123 Sunbury Ph: (03) 9744 2400

Email: [info@nixonfs.com.au](mailto:info@nixonfs.com.au) Web: [www.nixonfinancialservices.com.au](http://www.nixonfinancialservices.com.au)

Bob Nixon (AR 264149), Joel Plowman (AR 1256299) and Michelle Abela (AR 1267997)

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