



Where there's  
a Will,  
There's a Say



**TOWNSENDS** BUSINESS  
& CORPORATE **LAWYERS**

## Why do so many people not have a Will?

The current available survey evidence is that many adults in the U.S. do not have a Will.<sup>1</sup> Anecdotal evidence suggests the same in Australia. Combine this statistic with the estimated two thirds of existing Wills likely to be out-of-date owing to an individual's changed circumstances, and this leaves around 85% of adults without any means of adequately allocating assets in the event of death.

This is a tragedy. Many of these people will let their families down by not having in place the proper arrangements to protect family members and minimise tax on both the estate and the family member.

There have been a number of significant social and regulatory changes which have led to the situation that even if one does have a current Will in place, it may no longer suffice to cover all future eventualities.

## What has changed?

Previously, the Will was used to ensure certainty in the transfer of assets on a person's death to their family, and to avoid any disputes arising from this process.

Now a number of other factors have complicated the process:

- Massive growth in the uptake of financial products such as discretionary trusts and superannuation funds that fall outside the parameters of a Will. One of the drivers of this growth has been changes in superannuation law making this vehicle so much more attractive from a tax point of view and as a safe haven from bankruptcy trustees. A Will cannot regulate how these fund assets will be distributed.
- Substantial growth in litigation by disaffected family members disputing the allocation of assets through their relative's Will. Lawyers are even now specializing in estate challenges. As well, Courts have ruled that solicitors owe a duty of care to the deceased's potential beneficiaries so that if the Will has not been properly drawn those beneficiaries can sue the solicitor who prepared it.
- Growth in the incidence of divorce and partnership breakdowns, leading to what is now called the 'blended family', where children are categorized as 'yours', 'mine' or 'ours', which has created the potential for unhappy spouses and step-children to contest the Will.
- More onerous revenue claims against Wills and estates which have led to the increasing desire to protect estates from future tax bills.
- Growing levels of wealth in baby-boomers sometimes held across different countries, in different structures, and even subject to claims by disparate beneficiaries from different families!

The result is that a significant proportion of ordinary people now need a comprehensive range of documents in an estate planning package to cover all eventualities after their death.

A Will has become only **one** of the documents a person needs to have in their portfolio to protect their assets for future generations.

An effectively drawn Will and the other estate planning documents need not cost a fortune and will repay the set up costs many times over in peace of mind for the testator and their family and the avoidance of potentially costly litigation.

**Disclaimer:** The information in this document is general information only and cannot be relied upon as a substitute for professional advice. No action should be taken until (and we will not be liable to anyone unless) we have provided specific advice relevant to the particular circumstances.

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<sup>1</sup> <http://west.thomson.com/about/news/2008/06/30/findlaw-survey.aspx>