

**Wills & Trusts**

Notes from a talk by Catherine Rosair, General Practitioner of Law, on 23/04/2001 to BPW Pilbara.

Figures quoted 50% have legal will, 50% of those have made them in last 5 years – this was borne out by a quick straw poll of the group.

Wills need to cope with different status:

- single
- de facto
- de facto over 5 years
- married
- married over 10 years
- married with children

At each change of status one should have a new will, as outcomes you desire change. A standard will kit copes for only one type of will.

**It is really considerate to your family or loved ones to have a will.**

A common attitude is that when the will is needed I am not here (ie dead) so it won't worry me, this usually men. But the situation can get really ugly eg where previous wife is entitled to husband's estate but defacto is not. In Catherine's experience, it is usually the women who bring a couple in.

The problem with not having a will is that you die intestate. If don't have a will your wishes won't be abided by. It gets resolved then as a legal issue. If your husband dies without a will, and together you have 2 children, as the wife you get \$50 000 and the remainder is divided. If you are living in his house worth \$150k, then you can keep living in house free. If it is worth say \$200 000 you may either have to pay rent to your children or sell the property.

If your husband dies and you together don't have children you would get \$50 000 (?), his parents \$6000 (?) and the remainder is shared with his brothers and sisters.

A **Simple Will** for a married couple is he/she leaves everything to her/him and then to their children in equal shares and any children who predecease their share will pass to equally to their children.

However in these days the family unit is not as stable, and the Simple Will is no longer adequate for the variations the family units are showing.

**Note there is no family law act in WA.** If a de facto dies intestate, all their estate will go to the deceased's parents, brothers & sisters.

An example of complications:

If you are defacto and don't have a will, and you die all your estate will go as above. If you have children then it will go to the children (and not the defacto) etc.

As a defacto, say you do have a will and decide to get married that automatically invalidates your will. (**Yes getting married invalidates wills!**) Then if your husband leaves and you cut up your will then you die intestate. If you don't cut up your will – it will still stand and he will probably get the lot!

The moral is '**One will doesn't do**'. Discuss with someone who knows the law and update your will regularly. Make sure you understand the issues so you can feel secure that you have provided for your family.

Another example: If you are involved with someone ie married and you both have previous children. If you make a Standard Will this may not be sufficient. For example if you die, he can at a later stage remove your children from his will. So you need to draft the will to protect them.

**Estate planning - Trusts.**

Discretionary family trusts - targeted by tax office, there have been some questions as to whether to recommend them. Lawyers don't do the recommending of trusts, financial advisers do.

Generally only used if the estate is reasonably sizeable, eg \$0.5million and there are young children or children going off rails or are spendthrifts or may be targeted by matrimonial or property settlements. Trusts can be very effective if you leave money in the right kind of trust arrangement. 60% put together of themselves. A recent example is where a man has provided for his de facto (chronic alcoholic) and very young child, trust has significant amount, defacto gets to live in a house rent free with some funds but the rest is kept for the child.

The Federal government planned to introduce tax on trusts was due 1 July. Suspect this may not eventuate. Also concerns from the farmers and National Party. Tax advantages can be huge, need to talk to financial advisers.

Suspect that very few in this room came into an inheritance, however most of us building sizeable estates. My view is that early money for children spoils them. Trusts are very much like still being here to regulate funding.

### **Enduring Power of Attorney.**

If dead, you have a will. What about alive but legally dead. For example age related dementia or stroke, workplace, road accidents. 7000 people suffer brain injuries in WA every year. May recover, but what happen while they can't legally function.

If you and your husband, or de facto own joint property and if the one dies, then property flips over to the other partner. However if jointly owned, and he is incapacitated, you can't sell without your partners signature also the case for jointly owned shares and his bank account. It takes 4 to 6 weeks to apply for custody. Meanwhile you are worrying, as are your children, you may be off work looking after him and have no income.

A facility has been available since 1992 which helps, the Enduring Power of Attorney. It is unlike a normal one which will become void. It gets registered at DOLA, and lasts for ever and a day. Give signing authority to someone who you trust. They are invaluable, cheap and simple.

### **Answers to Questions**

1. Simple wills costs approx \$150. Public trustees charge 4% of estate. So if you have a \$200 000 estate that is a \$8000 fee. And if you haven't made a will the Public Trustees will still charge 4%.
2. If man married, sep 18yrs, new defacto and child. Wife will get it, but de facto can challenge. A lot of is money wasted. Ugly!
3. Superannuation and de facto? Super doesn't fall into your estate. It is a trust set up in your lifetime. They have own rules. Each has a different set of rules. Some have defactos but not same sex. In a recent example, notwithstanding named beneficiaries, trustees gave 10% to adult children (not named), including one who had refused to see the deceased for 20years - she in her late 30's got \$71 000. This ended up disadvantaging the one who was nominated and needed it (the underage daughter injured in accident) didn't get the amount she needed.  
Nerida noted that for Super beneficiaries you should think of the tax implications. Eg for a super of \$500 000. Two recipients one dependant (underage) won't be taxed and the one who is independent will be taxed. This means that they will get uneven amounts – just be aware of it when planning.
4. How about people want to be buried or where? Can be a real concern – nominate it in your will, especially for those who live a long way from relatives.
5. If you Scribble out will, doubt it will stand up in WA Supreme Court. Have had cases where people with Will Kit wills are unable to get probate on from Supreme court. Eg in WA must sign with same ink! Note a will can be challenged if you leave children out of it – unless you make an express wish in the will that you are leaving them out.

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